

DID THE GERMAN ACTIONS IN THE HERERO REBELLION
OF 1904–1908 CONSTITUTE GENOCIDE?

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ABSTRACT

DID THE GERMAN ACTIONS IN THE HERERO REBELLION OF 1904-1908
CONSTITUTE GENOCIDE? By Major Amy Rivera, 142 pages.

The Herero filed lawsuit against Germany in 2001, demanding reparations for the alleged genocide during German colonialism- resuscitating a century old debate of whether the Herero Rebellion is indeed the first genocide of the twentieth century. This study investigates the complex nature, background and origin of the term genocide ranging from the Nuremberg International Military Tribunal, to the Hague and the 1948 Genocide Convention. Analysis continues with an in depth look at the historical background of Germany, its South West African colony and German colonial policy. Furthermore, this study investigates the intricacies and depth of the Herero Rebellion—specifically the cause and course of the campaign, as well as the extermination order and its effect on both the Herero and Nama tribes. The study climaxes with the application of the Herero Rebellion to contemporary genocide convention as laid out by definition and criminal elements, alongside the proven notion that the premise of genocide did exist at that time not only in international law but specifically within various German agreements.

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ACRONYMS

ATCA	Alien Tort Claims Act of 1789.
GSWA	German South West Africa
IMT	International Military Tribunal
UDHR	Universal Declaration of Human Rights, 1948

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CHAPTER 1

INTRODUCTION

In the wake of World War II and the Holocaust, the world officially acknowledged and defined genocide as a crime in international law. During the nineteenth and twentieth century's genocide incidents exploded as the frequency and scale of genocide exceeded international tolerance. The Holocaust served as a pivotal moment in history as that threshold. Germany admitted to killing eleven million people, paid reparations to Holocaust survivors, and pursued criminal proceedings for key leaders who designed and executed mass murder, as a means for punishment and retribution.¹ Assumption of responsibility, pursuit of criminal trials, formal apologies, paid reparations, and the creation of memorials and monuments symbolized Germany's eagerness for amends, whether physical or symbolic in nature. Germany's apology constituted acknowledgement and regret for the Holocaust. Following the Holocaust, the international community acknowledged genocide as an urgent problem: defining the term in 1944, forming the United Nations in 1945 to promote peace and adopting the Convention on Prevention and Punishment of the Crime of Genocide on 9 December 1948.²

Historians, anthropologists, human rights activists and students scrutinize Germany for allegedly similar actions against native Herero and Namaqui peoples in German South West Africa in 1904, now modern day Namibia. The Herero Rebellion

¹Ray Spangenburg and Kit Moser, *The Crime of Genocide: Terror Against Humanity* (Berkeley Heights: Enslow Publishers, Inc., 2000), 14.

²Ibid., 15.

took place during German control of the colony from about 1904 to 1908. The incident hit news lines immediately following the rebellion. The spotlight has only brightened with constant and controversial debate over the years, involving human rights treaties, Namibian independence, the Herero lawsuit for reparations and the ongoing debate over such reparations. Controversy still exists over whether the Herero Rebellion was the first genocide of the 20th century. Ostensibly, the lines of colonialism blurred, morphing into brutality and murder beyond the scope of routine colonial operations. Thousands of natives died in the midst of German colonialism but not entirely because of direct German action. Many Herero died from disease, famine, dehydration and inter-tribal war. The alleged genocide remains legally and historically unsettled, more so today following World War II, the Holocaust, genocide conventions, Namibian independence and the Herero quest for reparations.

Genocide, a blend of the Greek word *genos* [a people or tribe] and Latin suffix *cidium* [killing] originated with Raphael Lemkin.³ Lemkin, an international expert, defined a particular crime against humanity in 1944 following the world's most catastrophic genocide, the Holocaust. Genocide was never a synonym for the Holocaust as Lemkin formulated prototypes of genocide as early as the 1930s.⁴ Conceptually the word itself makes sense, only defining genocide is problematic. Challenges for genocide definition include reckless application, vague definitions, Holocaust association and political aversion to utilizing the term genocide. A definition should provide clarity and

³Spangenburg and Moser, *The Crime of Genocide: Terror Against Humanity*, 14.

⁴A. Dirk Moses, "Moving the Genocide Debate Beyond the History Wars," *Australian Journal of Politics and History* 54, no. 2 (2008): 255.

describe something in such a manner, as to understand it; however, “social phenomena are rarely if ever so clear-cut and easily captured by a few brief sentences. Genocide is no exception.”⁵ Genocide, by legal definition, overlaps war crimes and human rights violations (targeting civilians, rape, and torture), further demonstrating the multifaceted aspects of genocide.⁶ Naturally, people misuse the term genocide based on its dynamic and controversial nature. When used correctly, genocide stands out as a “universally recognized abominable crime that shocks the conscience of all civilized societies.”⁷

How then, is it possible that controversy exists with for 1904 incident that predates the 1944 standardized terminology and establishment of genocide as a distinct crime? Winston Churchill, Prime Minister of England, assessed the German concentration camps in 1945 when no legal definition existed to describe the massacre. At that time, nations could describe maltreatment, torture and various other war crimes—“but for these crimes they had no name.”⁸ Eventually, the vocabulary incorporated the terms “Genocide” and “Holocaust” to describe the world’s most well known crime and genocide occurrence. Though the Herero Rebellion heralds the genocide convention, the term may still apply—and that is the objective of this study. Even though genocide terminology did not exist, contemporaries used synonyms like destruction, extermination,

⁵Alex Alvarez, *Genocidal Crimes* (London: Routledge Taylor and Francis Group, 2010), 7.

⁶Ibid.

⁷Howard Ball, *Prosecuting War Crimes and Genocide* (Lawrence: University Press of Kansas, 1999), 8. Even “universally recognized” leaves room for interpretation as criteria for this are nebulous. The point here is that genocide shocks the conscience of the world’s average, reasonable person.

⁸Spangenburg and Moser, *The Crime of Genocide: Terror Against Humanity*, 89.

annihilation, extinction and extirpation-making “genocidal consciousness” prevalent during the Herero Rebellion timeframe.⁹ Regardless, a certain level of risk exists when relating criminal judgment and historical interpretation because emotion and morality can distort interpretation and historical understanding.¹⁰ Historical knowledge and analysis of the Herero Rebellion highlights the humanitarian historical perspective of genocide, which is not limited to the Holocaust standard. This study investigates the international human right laws, treaties and criminal mechanisms existing at that time to determine the legality and morality of killing people based on contemporary standards-and if so does it fit the elements of the crime. The contemporary standards and the elements of the crime (act and intent) should demonstrate applicability or inapplicability of the term with regard to the Herero Rebellion. Orchestration of this study weighs facts and evidence appropriately to evaluate genocidal act and intent, in accordance with the universally agreed upon definition and criteria--keeping in mind the controversial and interpretive nature of modern and contemporary genocide.

The Herero

So who are the Herero and what happened to them? The Herero are nomadic, Bantu speaking cattle farmers who live in South West Africa.¹¹ Prior to 1830, South West Africa contained five primary tribal groups: the Ovambo, Herero, Nama, Berg-Dama and

⁹Moses, “Moving the Genocide Debate Beyond the History Wars,” 252.

¹⁰*Ibid.*, 250.

¹¹Frank R. Vivel, *The Herero of Western Botswana: Aspects of Change in a Group of Bantu-Speaking Cattle Herders*, Edited by Robert F. Spencer (Saint Paul: West Publishing Company, 1977), 4.

the Bushmen (original inhabitants). The Herero, Nama, and Ovambos shared the South West Africa region as the three largest settled groups.¹² Both the Herero and Nama, as nomadic, cattle raising tribes, encroached on respective grazing lands. Windhoek as the cornerstone, centrally located between Herero and Nama grazing lands– symbolized the epicenter of tribal rivalry. War broke out between the two in 1863, and throughout the 1870s and 1880s, with European influence from missionaries and explorers.¹³ In the 19th century, German missionaries and settlers arrived in the area with increasing numbers throughout the early 20th century. By 1890, more than eighteen mission posts existed amongst the Herero lands alone, with considerable influence and intervention during the 1867, 1880, 1884 and 1894 tribal conflicts.¹⁴ Increasing tensions warranted European interest and intervention to safeguard mission and trader activities. As expected, the newcomers gradually altered the culture, economy and landscape–slowly at first then abruptly with the drastic influx of settlers. Early on, settlers purchased small tracts of land from the Herero and Nama. Naturally, as the settler population increased, so did the demand for land and the tensions between Germans and natives.

The native populations skirmished periodically amongst themselves for land and scarce resources. The Germans established the German South West Africa (GSWA) colony in 1884. German colonial objectives included land, cattle, natural resources, trade, prosperity and establishment of a “Little Germany” with an abundance of German settlers

¹²Helmut Bley, *South-West Africa under German Rule 1894-1914*, trans., ed., and prepared by Hugh Ridley (Evanston: Northwestern University Press, 1971), xxiii.

¹³Ibid.

¹⁴Ibid., xxiv.

in South West Africa. Africans lost cattle to German confiscation, paid fines and burdened themselves with credit at impossible rates. German colonial administration instituted rules and systems favoring colonial objectives and settler interests. Publications outlined the harsh rules as “Every colored person must regard a white person as a superior being, and in court the evidence of one white man can only be outweighed by the evidence of seven colored persons.”¹⁵ Rules such as these were typical for a colonial power and prevalent throughout other European colonies on the continent.¹⁶ Needless to say, such rules and circumstances contributed to Herero discontent. The Herero and Nama tribes rebelled in 1904, taking up arms against oppression and exploitation--and so the Herero-German war began. The uprisings culminated about 1907, with the death of about 80 percent of the Herero and Nama tribes and their cherished cattle. The German imprint, extremely powerful, still exists in Namibia. The Germans unveiled a War Memorial honoring their soldiers; its inscription reads, “May our German way of life take root in this colony for long years to come.”¹⁷ The memorial still stands at the city center in Zoo Park along Independence Avenue (formerly the Kaiserstrasse) along with several other German legacies. Visitors can walk the Kaiserstrasse, worship in the Christuskirche, stroll through the German park, admire the German architecture and look

¹⁵Peter Duignan and L. H. Gann, *South West Africa–Namibia* (New York: American African Affairs Association, Inc., 1978), 9.

¹⁶Steven L. B. Jenson, ed., *Genocide: Cases, Comparisons and Contemporary Debates* (Copenhagen: Danish Center for Holocaust and Genocide Studies, 2003), 19.

¹⁷Bley, *South-West Africa under German Rule 1894-1914*, 78.

at military monuments and forts that recall Germany's vanished imperial might.”¹⁸

Germany left a lasting impression, however, was genocide part of that legacy?

Namibia's Independence and Spotlight on the Alleged Genocide

The League of Nations, the precursor to the United Nations, mandated South African control when Germany lost possession of the colonies in 1919. Article 119 of the 1919 Treaty of Versailles reads: “Germany renounces in favor of the Principal allied and Associated Powers all her rights and titles over her overseas possessions.”¹⁹ South African control continued until the African regions sought and earned their own independence. What used to be the German South West Africa and the Eastern Africa are now Namibia, Tanzania, Burundi, and Rwanda. Namibia gained independence in 1990. African independence, and specifically Namibia's independence, emanates significance for several reasons. Namibia's independence put genocide back in the spotlight, igniting debate among human rights activists, historians, anthropologists, scholars, authors and students. The spotlight brightened in October 2004 with the Centennial Memorial, featuring a semi-apologetic speech by the German minister for Economic Cooperation and Development, which did not include genocide admission. The speech further fueled the genocide controversy.

Genocide application--controversy enough--waned in comparison to the controversial nature surrounding reparations for an alleged offense over one hundred years ago and more than fifty years before the term debuted in the international

¹⁸Duignan, *South West Africa–Namibia*, 9.

¹⁹Treaty of Versailles, 28 June 1919, Yale Avalon Project, <http://net.lib.byu.edu/~rdh7/wwi/versailles.html> (accessed 3 February 2012).

community. This contemplative review focuses only to determine a verdict of genocide with no interest in a reparation validity determination.

Modern Day Herero and Reparations Lawsuit

The Herero Rebellion began 12 January 1904 in favor of the Herero, until they culminated at the decisive battle of Waterberg on 11 August 1904.²⁰ Despite depleted Herero forces, neither Herero or German authorities negotiated for a cease-fire. Following Waterberg, Germans pushed and isolated the Herero deep into the desert where they died of starvation and thirst. The Germans maintained limited numbers of Herero for work on mines and railroads, isolating them in concentration camps well after the conclusion of the rebellion. Germans built the stockades and camps to hold over eight thousand Herero, complete with chains for prisoners.²¹ The camps, run by the administration or private companies, continued well after the war ended, until abolished in 1908.²² The German Administration prohibited the Herero from owning land and livestock in accordance with government ordinance, a punishment for rebellion.²³ They

²⁰Karina Boeckmann, "Namibia: Skulls Repatriated, But No Official German Apology," *InterPress Service*, 4 October 2011, <http://ipsnews.net/news.asp?idnews=105338> (accessed 10 April 2012).

²¹Jeremy Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers* (Cape Town: UCT Press, 2010), 148.

²²Jeremy Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century: the Socio-Legal Context of Claims under International Law by the Herero against Germany for Genocide in Namibia, 1904 to 1908* (Westport: Praeger Security International, 2009), 7.

²³Sasha Romanowsky, "Analysis of an Apology," USC Santa Barbara, 2009, <http://www.history.ucsb.edu/faculty/marcuse/classes/133p/papers/096RomanowskyHereroGenocide> (accessed 3 February 2012).

emerged shattered and powerless, with no land or cattle. The Herero struggled to maintain their traditional way of life as cattle-raisers and never fully recovered.

Prior to the rebellion, the Herero was one of the three largest tribes in Africa. The modern day tribe is tiny compared to the pre-1904 population, and dispersed over several native “Reserves.”²⁴ Approximately 80 percent of the Herero perished, reduced to about 16,000, 14,000 of which existed in German concentration and labor camps following the war.²⁵ The war resulted in shortage of labor, so the forced labor camps provided Herero manpower for civilian and military projects until about 1908.²⁶ The remaining Herero fled to the Cape Colony or Bechuanaland.²⁷ Because so many died in the early 1900s, anthropologists only acknowledge those who fled when referring to lineage of the Herero. The Herero today wish for closure and reparations from Germany for the alleged crimes committed. The Herero filed claim in the U.S. courts against Deutsche Bank (for financing the colonial administration) and the Woermann Line (currently Deutsche Afrika-Linien GmbH and Co.) for their involvement in slave labor and concentration camps.²⁸ Right, wrong or indifferent, the Herero seek restitution for what they believe constituted genocide.

²⁴Bley, *South-West Africa under German Rule 1894–1914*, xxii.

²⁵Peter H. Katjavivi, *A History of Resistance in Namibia* (Paris: United Nations Educational, Scientific and Cultural Organisation, 1988), 10.

²⁶Jan Bart Gewald, *Herero Heroes* (Oxford: David Philip Publishers, 1999), 185.

²⁷For explanation of contemporary and modern terminology: Bechuanaland is now modern day Botswana, as of 1966. And South Africa was the Cape Colony until about 1910 when it became the Union of South Africa.

²⁸Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century*, 8.

Namibia and Germany have not formally acknowledged the Herero Rebellion²⁹ as genocide. Germany simply declared, during the 2004 remembrance, “We Germans accept our historical and moral responsibility and the guilt incurred by Germans at that time. And so, in the words of the Lord’s Prayer that we share, I ask you to forgive us our trespasses.”³⁰ German Minister of Economic Cooperation and Development, Heidemarie Wiecek-Zeul did not use the word “apology” and when challenged she added, “Everything I said in my speech was an apology for the crimes committed under German Colonial Rule.”³¹ As a single minister, she apologized for colonial actions taken by Germans who have long since perished. An official apology deemed adequate by the

²⁹According to the *New African*, January 2001 edition, featuring Absalom Shigwedha’s article entitled “Hereros v Germany,” the Namibian government is adamantly opposed to the Herero quest for reparations. The Namibian government feels strongly that all Namibians suffered not just the Herero. Germany provides development aid to Namibia for the entire country, and the Namibian government is satisfied with the economic development funding for roads and schools for all ethnic groups that suffered from colonialism. As of 2001 Germany provided approximately N\$3 billion to Namibia. Hence Namibia does not wish to jeopardize cooperation with Germany and continuation of economic assistance for the country. Similarly, the January 2005 *New African* article entitled “Namibia Cold Discourse Upon Chronic Pain” (No Author) mentions internal disagreements in Namibia between Herero and Nama tribes which suggests the Nama fatalities justify genocide more so as the Nama did not emerge from the war with shared victim status like the Herero, decimated and forever inadequate to recover as a nation or tribe. The article references the German-Herero war as “one big armed robbery” and that “If Germany was to admit that it was genocide, then the case for reparations will find basis in merit.” Reasons that likely factor in Namibia’s resistance to support the Herero case: Herero were not the only victims and German reparations would alter the economic support mechanism currently in place.

³⁰Dr. Ngondi A. Kamatuka, “The 2004 Centennial Remembrance of the Ovaherero (Herero) Genocide by Germany, 14 August 2004,” Okakara Community Cultural and Tourist Center, 4 November 2004, 30.

³¹*Ibid.*

Herero would have to come from German Bundestag (parliament) itself.³² Only the Bundestag and the Chancellor possess the power to speak on behalf of the entire German population. Therefore, the minister's speech does not satisfy the Herero quest for closure.

This topic warrants exploration since the Herero Rebellion remained in the spotlight for over a century, especially following Namibian independence, the Herero lawsuit, and the centennial anniversary of the tragedy. Worthwhile analysis should determine if the deaths of so many Herero constituted genocide, which contributes evidentiary analysis to an equally controversial issue regarding reparations. In 2010, the Herero tribe sought reparations from the German government and industry for the wrongdoings that occurred over a century earlier. The Herero request for reparations drew attention to a pre-Holocaust atrocity, seeking similar recognition, apology and reparations. Legal proceedings face daunting obstacles, particularly as neither perpetrators nor the victims of these alleged crimes are still alive. Likewise, the case promises to determine--with the force of international civil law--whether the German actions in the Herero Rebellion constituted genocide. The debate for reparations continues as political influence and worldwide ramifications complicate an already dynamic matter of genocide. This study focuses only on whether German actions satisfy the definition and criteria for genocide--a small segment of a much larger debate.

³²Kamatuka, "2004 Centennial Remembrance of the Ovaherero (Herero)," 32.

CHAPTER 2

GENOCIDE DEFINED

The Hague Conventions of 1899 and 1907 formulated the first formal statements addressing the laws of war and war crimes in the growing arena of international law. International laws of war gradually evolved to meet changing circumstances of war. Modern awareness and definition launched in the wake of World War II. The 1948 Genocide Convention was the first human rights treaty adopted by the United Nation's General Assembly. Article II defined the crime of genocide as a series of acts "committed with intent to destroy, in whole or in part, a national, ethical, racial or religious group as such."³³ By design, it focused on protecting national, racial, ethical and religious minorities to ensure their continued existence. This chapter indulges in an overview of historical to modern evolution of human rights in international law.

Nuremberg International Military Tribunal–International Law and Accountability

One cannot discuss genocide without referencing the ultimate catalyst for human rights and accountability in international law–the Nuremberg International Military Tribunal (IMT). The Nuremberg IMT declared "enforceable international norms," governing conduct within armed conflict and demonstrated individual responsibility for

³³William A. Schabas, "Convention for the Prevention and Punishment of the Crime of Genocide," *United Nations Audiovisual Library of International Law*, 2008, www.un.org/law/avl (accessed 2 November 2011). The Genocide Convention was signed 11 December 1948 and took effect 12 January 1951. The term "genocide" was coined by Raphael Lemkin in his book *Axis Rule in Occupied Europe*, published in 1944.

violations.³⁴ The Nuremberg IMT prosecuted Nazi leaders for crimes against humanity (November 1945 to October 1946) prior to criminal definition in 1948.³⁵ The London Charter (8 August 1945) outlined IMT jurisdiction, offenses and procedural framework.³⁶ The Nuremberg IMT governed three counts—“crimes against peace (aggressive war), crimes against the laws of war (war crimes) and crimes against humanity (murder and injury to civilians for racial, religious or political reasons).”³⁷ War crimes incorporated “violations of the laws or customs of war” including civilian enslavement, pillaging and plundering. Crimes against peace included “planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements, assurances or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.” And crimes against humanity included “murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of domestic law of the country where perpetrated.”³⁸ Indictments followed the principles outlined in the charter. Four allied nations (U.S., Great Britain, Soviet Union

³⁴Henry T. King, Jr., “Address: the Meaning of Nuremberg,” *Case Western Reserve Journal of International Law* 30, no. 1 (Winter 1998): 144.

³⁵Joseph E. Persico, *Nuremberg: Infamy on Trial* (New York: Penguin Books, 1994), xi.

³⁶Bernard D. Meltzer, “Robert Jackson: Nuremberg’s Architect and Advocate,” *Albany Law Review* 68 (1999): 55.

³⁷King, “Address: the Meaning of Nuremberg,” 144.

³⁸Meltzer, “Robert Jackson: Nuremberg’s Architect and Advocate,” 57.

and France) judged twenty-two Nazi leaders against those counts: twelve sentenced to death, three sentenced to life in prison, four sentenced to prison terms and three acquitted.³⁹

The Nuremberg Trials marked a historical landmark as perpetrators faced criminal proceedings for crimes committed during wartime and set a precedent for international justice regarding human rights violations. Nuremberg condemned aggressive war and held key leaders responsible under the purview of international law. Nuremberg garnered a reputation as the most impressive moral development of all time, demonstrating reasonable limits on national sovereignty in the best interests of world security.⁴⁰ The Nuremberg legacy entailed individual responsibility for human rights and significantly influenced political culture and social norms.⁴¹

The Nuremberg IMT, though monumental, faced criticism regarding jurisdiction, ex post facto law and allegations of “victors’ vengeance.”⁴² The four allied nations contributed to unprecedented and dubious jurisdiction whereby a “British prosecutor tried a German national before a Soviet judge for a murder in Poland.”⁴³ European power, army reputations, historical imperatives and national interests marginalized jurisdictional prowess in the matter of the Nuremberg IMT. The Nuremberg trial endorsed universal

³⁹Spangenburg and Moser, *The Crime of Genocide: Terror Against Humanity*, 91.

⁴⁰King, “Address: the Meaning of Nuremberg,” 147.

⁴¹Mark Osiel, *Mass Atrocity, Collective Memory and the Law* (New Brunswick: Transaction Publishers, 1997), 4.

⁴²Persico, *Nuremberg: Infamy on Trial*, 437.

⁴³*Ibid.*, xi.

jurisdiction, claiming civilization as the complainant and demonstrating heinous and horrible crimes against both victims and humanity. This universal jurisdiction emanated from Nuremberg, perhaps the most significant legacy of the tribunal. Another equally substantial disparagement for the entire proceedings involved accusations of creating ex post facto law, which certainly applies to this particular study. “Nullum crimen et nulla poena sine lege” means essentially no crime or punishment without pre-existing law.⁴⁴ Critics acknowledged aggressive and abominable acts, but questioned legal delineation for these specific crimes. Nuremberg IMT defense relied heavily on (1) German participation in treaties governing the acceptable norms of warfare; and (2) clear violations of universally agreed upon human rights violations such as murder, torture and enslavement.⁴⁵ Debatably, the IMT simply punished acts already regarded as crimes. Overall, the Nuremberg proceedings existed as a powerful and unique drama to: punish the guilty, set a precedent, provide deterrence and incorporate a punishment mechanism.⁴⁶ The Nuremberg IMT--far from perfect--adequately punished the Nazis for deliberate killings “divorced from any military necessity.”⁴⁷ Interestingly enough, controversy remains concerning the Nuremberg’s legitimacy, jurisdiction, ex post facto law, fairness, verdicts and quirky distinctions between law and justice.⁴⁸ Despite any doubts, Nuremberg undoubtedly documented German crimes, neutralized German

⁴⁴Persico, *Nuremberg: Infamy on Trial*, 33.

⁴⁵*Ibid.*

⁴⁶*Ibid.*, xii.

⁴⁷*Ibid.*, 437.

⁴⁸*Ibid.*, 440.

martyrdom and set a legal precedent.⁴⁹ The Genocide Convention of 1948 reflected those Nuremberg milestones and solidified human rights laws for the international arena.

Genocide Convention of 1948

Human rights concepts originated with the American Declaration of Independence in 1776, Bill of Rights in the U.S. Constitution 1789, and the French Declaration of the Rights of Man 1791. However, the newly formed United Nations embarked upon the Universal Declaration of Human Rights (UDHR) in 1948 establishing “for every person on earth equal fundamental rights. It laid the groundwork for legal consequences for genocide—the most severe human rights violation. The UDHR finally put a name on the crime.

The United Nations General Assembly approved the Universal Declaration of Human Rights (UDHR) on 10 December 1948 (Refer to Appendix B for the document) largely because of World War II. The conclusion of the war, the establishment of the United Nations, mass atrocities and the Holocaust motivated the international community to intervene and prevent genocide. The first draft took form in 1946 and went through several iterations before the 1948 approval. At least 50 participant states took part. The formulation of policy constituted a singular event in international law. Upon approval in 1948, the committee directed members to distribute and publicize the document "to cause it to be disseminated, displayed, read and expounded principally in schools and other

⁴⁹Persico, *Nuremberg: Infamy on Trial*, 443.

educational institutions, without distinction based on the political status of countries or territories.”⁵⁰ Participants marveled at the opportunity to affect the future.

I perceived clearly that I was participating in a truly significant historic event in which a consensus had been reached as to the supreme value of the human person, a value that did not originate in the decision of a worldly power, but rather in the fact of existing—which gave rise to the inalienable right to live free from want and oppression and to fully develop one’s personality. In the Great Hall . . . there was an atmosphere of genuine solidarity and brotherhood among men and women from all latitudes, the like of which I have not seen again in any international setting.⁵¹

The world recognized the UDHR as the prominent basis of international human rights law. Regardless of “nationality, residence, gender, national or ethnic origin, color, religion, language or any other status,” the international community committed to perpetuating “dignity and justice for all.”⁵² The international community has since built upon the foundation of the UDHR, establishing the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1976. The covenants have essentially made the UDHR rights binding to the ratification states. The binding rights include “right to life, equality before the law, and freedom of expression, right to work, social security and education.”⁵³ The covenants and UDHR combined formulate the International Bill of Human Rights. The fundamental concepts outlined in the UDH matured, encompassing “racial discrimination, torture, enforced disappearances, disabilities, and the rights of women, children, migrants, minorities, and

⁵⁰United Nations, “Universal Declaration of Human Rights,” http://www.un.org/en/documents/udhr/hr_law.shtml (accessed 21 January 2012).

⁵¹Ibid.

⁵²Ibid.

⁵³Ibid.

indigenous peoples.” The UDHR solidified the necessity for inherent freedoms and basic rights for all human beings worldwide.

As demonstrated during the introduction, genocide definitions are not clear and concise, leaving much room for interpretation. Among other things, genocide does not encompass political, economic or other groups. Genocide does not specify a threshold for mass killings to qualify as genocide. Moreover, genocide definitions fail in differentiating between explicit killing, serious physical or mental harm and transferring children.⁵⁴ Ambiguity and definition inadequacies drove alternative definitions whereby scholars incorporated various views and interpretations of genocide—resulting in the most vexing challenge associated with genocide: defining it.

To clarify, one such historical perspective captures a discernible definition of genocide, which alleviates the necessity to differentiate the Herero Rebellion from say the atomic bomb or all wars ever fought. Historian Mark Levine, author of *Genocide in the Age of the Nation State*, argues that “genocide occurs when a state, perceiving the integrity of its agenda to be threatened by an aggregate population—defined by the state as an organic collectivity, or series of collectivities—seeks to remedy the situation by the systematic, en masse physical elimination of that aggregate, *in toto*, or until it is no longer perceived to represent a threat.”⁵⁵ Though Levine’s definition applies broadly to colonialism, the Extermination Order may sufficiently distinguish the Herero Rebellion from all other European colonial wars. For the purpose of this study, Lemkin’s 1948

⁵⁴Ernesto Verdeja, “Genocide: Clarifying Concepts and Causes of Cruelty,” *The Review of Politics* 72 (2010): 514.

⁵⁵*Ibid.*, 519.

definition, the historical premise as demonstrated in The Hague and IMT, Levine's interpretation and the Preparatory Commissions' criminal elements adequately suits the intended purpose of this Herero Genocide in retrospect.

Genocide: Elements of the Crime

Genocide--now an international crime--imposed responsibility on the individual or state, within or outside the context of war. International law prohibits "genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide," meaning it is punishable by law.⁵⁶ The Preparatory Commission for the International Criminal Court (30 June 2000) defined the internationally accepted legal definition, including the elements of the crime. The elements of the crime include:

⁵⁶Ball, *Prosecuting War Crimes and Genocide*, 88-89.

Table 1. Elements of the Crime-Genocide

Act	Genocide by killing	Genocide by causing serious bodily or mental harm	Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction	Genocide by imposing measures intended to prevent births	Genocide by forcibly transferring children
Conduct	Perpetrator killed one or more persons	Perpetrator caused serious bodily or mental harm to one or more persons	Perpetrator inflicted certain conditions of life upon one or more persons	Perpetrator imposed certain measures upon one or more persons	Perpetrator forcibly transferred one or more persons
NOTE:	Term killed is interchangeable with the term caused death	This conduct may include, but is not limited to, acts of torture, rape, sexual violence or inhuman or degrading treatment	Term conditions of life may include, but is not limited to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes		The note forcibly is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power
	Such person or persons belonged to a particular national, ethnical, racial or religious group.				
Consequences and Circumstances			Conditions of life were calculated to bring about the physical destruction of that group, in whole or in part	The measures imposed were intended to prevent births within that group	transfer was from that group to another group; that person or persons were under 18; perpetrator knew, or should have known, that person or persons were under 18
Intent	Perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such				
Context	Conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.				
NOTE:	The term "in the context of" would include the initial acts in an emerging pattern; the term "manifest" is an objective qualification				

Source: Created by author from Preparatory Commission for the International Criminal Court, 6 July 2000, <http://www.preventgenocide.org/genocde/elements.htm> (accessed 3 February 2012).

In criminal law, culpability for crimes like genocide propagates from both characteristics of act (actus reus) and intent (mens rea). Genocide determination originates in a legitimate court with legal jurisdiction to do so. The International Criminal Court currently serves that purpose. The definition of genocide includes intent because it needs to have been “deliberate, calculated and purposive,” not accidental or unintentional.⁵⁷ As defined, genocide does not just happen—it is organized and planned as

⁵⁷ Alvarez, *Genocidal Crimes*, 19.

a reasonable means to an end. Skeptics object to colonial genocide classification on grounds that colonialism is routinely “haphazard and uncoordinated” whereby no explicit plan existed for colonialism let alone genocidal intent. However, there need be no plan to prove genocidal intent. Intent, though ambiguous and subjective, typically derives from actions, words and patterns. Both the International Criminal Tribunal for Rwanda (ICTR) and the International Court of Justice (ICJ) for *Bosnia v. Serbia* decided that genocidal intent arises from “widespread and systematic patterns” illustrated in three ways: “through individual perpetrators, through a comprehensive plan and through consistent pattern of action.”⁵⁸ Legal analysis and behavior pattern assessment illustrates whether the Herero Rebellion constituted genocide. A slight indulgence of historical international law and German society provides clarity and context prior to navigation of the fundamental premise.

⁵⁸Alvarez, *Genocidal Crimes*, 20.

CHAPTER 3

HISTORY OF HUMAN RIGHTS AND GERMAN INTERNATIONAL AGREEMENTS AT THAT TIME

Human rights theories originated after centuries of human struggle for freedom and dignity, characterized by severe suppression and suffering. Respect for individual dignity took priority when the individual opposed the will of a ruler, prescriptions of religion, or the values, customs and traditions of the community. The modern concept of human dignity originates from the dawn of recorded history, rooted in Roman law, natural rights and the social contract.⁵⁹ Early expressions include the English Bill of Rights 1689, the American Declaration of Independence 1776, and the French Declaration on the Rights of Man and the Citizen of 1789. Colonialism fueled this sense of individual opposition. “European settlers and their descendants abroad very often did not extend their concern with the dignity of the individual to the members of the peoples and the peoples themselves whom they met in the territories they colonized. Racial discrimination, marginalization, domination and in some cases outright extermination followed in the footsteps of many of the European settlers.”⁶⁰ The international

⁵⁹Human rights theories took root in 17th century, though new theories like historicism, utilitarianism, Marxism and positivism in the 19th century outshined early revolutionary ideals of human rights of the 18th century; Universal Declaration of Human Rights, 8 and 9.

⁶⁰Universal Declaration of Human Rights Commentary; this book is the first commentary in the English language on the Declaration, capturing the historical background, history of drafting and adoption at the United Nations, subsequent developments and follow-up measures (Scandinavian University Press,1992), 9.

community took serious notice of human rights violations only after the Holocaust.⁶¹ Participants and contributors from all over the world joined forces to outline a set of universal principles and standards. On 10 December 1948, the UDHR instituted the only universal human rights standard, “placing the human person squarely at the center of national and international values.”⁶² International law, since its inception, has always included some form of human rights though not always clearly defined or protected.

Application of Modern Terminology to a Historical Event

International human rights law is a very complex and dynamic conglomeration of treaties, documents and non-governmental sources. Poor consolidation of mass resources results in an incoherent and disorganized array, making it difficult to ascertain the specific origin, evolution and meaning of human rights law throughout history. However, for the purpose of this study we will look at the definition of genocide in 1948 as well as treaties and conventions leading up to 1948 that establish a foundation for human rights laws seeking preferential treatment of mankind (i.e. the value of human life) during armed conflict. Analysis of human rights laws before and after the Genocide Convention will provide a basis for comparison to determine if the modern term applies to the historical event. The Herero Rebellion may or may not constitute genocide by modern definition or application of the term to the historical event. Primarily, we must examine

⁶¹The Holocaust (Hitler’s extermination practices) broke the threshold of historical atrocities and brutal occupation policies; all contributed to the universal mindset to mandate establishment of legal order to curb such instances in the future.

⁶²United Nations, Universal Declaration of Human Rights: A Commentary, 17.

the origin and evolution of international law and human rights laws, to understand the nature with which we can make a comparison of modern day and historical concepts.

Origins and Evolution of International Law and Human Rights Violations

The longest standing treaty originated six centuries ago when Portugal and England entered into the 1373 Anglo-Portuguese Treaty; documenting trust, friendship and alliance between two powers. The parties revised the treaty eight times, making it the longest valid treaty in history. A treaty, defined as a formal agreement between two or more states in reference to peace, alliance, commerce or other international relations, binds the signatories to the conditions outlined in the agreement. Treaties demonstrate viable mechanisms for countries to engage in international relations within the diplomatic, information, military and economic spectra. Treaties evolved from primitive ends, ways and means—just as warfare evolved in the same manner.

In the first place we settle and covenant that there shall be from this day forward . . . true, faithful, constant, mutual and perpetual friendships, unions, alliances, and needs of sincere affection, and that as true and faithful friends we shall henceforth, reciprocally, be friends to friends and enemies to enemies, and shall assist, maintain, and uphold each other mutually, by sea and by land, against all men that may live and die.⁶³

War evolved as technology and methodology altered the way men fought. The nature of death in war evolved right alongside technology innovation. Henry Dunant once wrote,

⁶³The Anglo-Portuguese Treaty of 1373 was signed between King Edward III of England and King Ferdinand and Queen Eleanor of Portugal. It was a treaty of "perpetual friendships, unions [and] alliances" between the two seafaring nations. It is the oldest active treaty in the world. It was reinforced throughout history, including in 1386, 1643, 1654, 1660, 1661, 1703, 1815 and by a secret declaration in 1899. It was recognized in the Treaties of Arbitration in the 20th century between Britain and Portugal in 1904 and 1914, <http://www.angloportuguesesociety.org.uk/alliance-history> (accessed 11 March 2012).

“If the new and frightful weapons of destruction which are now at the disposal of nations seem destined to abridge the duration of future wars, it appears likely, on the other hand, that future battles will only become more and more murderous.”⁶⁴ Dunant—who referenced the evolution of technology and the impact on warfare in the 19th century as witnessed during the Battle of Solferino in 1859 was concerned with the level of suffering and the casualties of war.⁶⁵ Dunant and four Geneva citizens later established the International Committee of the Red Cross and drafted the first Geneva Convention of 1863. The first Geneva Convention focused on protecting wounded soldiers and their caregivers from attack. The Geneva International Conference, 26-29 October 1863, established the international symbol and neutrality for medical support personnel, facilities and ambulances.⁶⁶ Dunant contributed significantly to the considerations of and thresholds for human suffering in war.

⁶⁴International Committee of the Red Cross, speech by Jakob Kellenberger, president of the ICRC, 140th Anniversary of the 1868 Saint Petersburg Declaration, 24 November 2008.

⁶⁵Henry Dunant wrote, *A Memory of Solferino*, published in 1862, as his inspiration for establishing the Red Cross. During the Battle of Solferino, French and Austrian troops suffered gravely as veterinary personnel outnumbered medical personnel, medical supplies had been left behind and transportation was nonexistent. Those who could, made it to a nearby town where volunteers did what they could to treat the wounded, including Henry Dunant. ICRC article entitled “Battle of Solferino 24 June 1859,” <http://www.icrc.org/eng/resources/documents/misc/57jnvr.htm> (accessed 31 December 2011).

⁶⁶Geneva International Conference, 26-29 October 1863, in Geneva established the Red Cross and in-turn created international law governing the treatment of sick and wounded soldiers and their caretakers in the midst of conflict. International Committee for the Red Cross, <http://www.icrc.org/ihl.nsf/FULL115?OpenDocument> (accessed 16 December 2011).

Within a decade, nations drafted and signed the Saint Petersburg Declaration prohibiting the use of certain weapon systems in war, which caused unnecessary suffering. The 1868 declaration provided the cornerstone for customary international law with later inclusion in the 1899 and 1907 Hague Conventions. The declaration influences modern day conventions regarding issues such as laser weapons, anti-personnel mines and cluster munitions.⁶⁷ The 1868 Saint Petersburg Declaration included new and innovative concepts to minimize human suffering and emphasize humanity versus military necessity.

Saint Petersburg Declaration 1868

For international law respecting war is not formed only by humane feelings, but it has as its basis both military necessity and efficiency and humane feelings, and is formed by weighing these two factors. With regard to this point, the doctrine mentions as its type the provision in the St. Petersburg Declaration of 1868, which prohibits the use of projectiles under 400 grammes which are either explosive or charged with combustible or inflammable substances, and explains the reason as follows: These projectiles are so small that they have only such a power as to kill and wound one officer or man, but for that effect an ordinary bullet will do, and there is no need to use inhumane weapons which have no more profit. On the other hand, however great the inhumane result of the use of a weapon may be, the use of the weapon is not prohibited by international law, if it has a great military efficiency.⁶⁸

⁶⁷Protocol IV (Blinding Laser Weapons) to the 1980 Convention; Protocol II to the 1980 Convention (Prohibitions or Restrictions on the Use of Mines, Booby Traps, and Other Devices) as amended on 3 May 1996; and Convention on Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction, 18 September 1997; <http://www.icrc.org/ihl.nsf/INTRO?OpenView> (accessed 16 December 2011).

⁶⁸Ryuichi Shimoda et al. v The State, Tokyo District Court, 7 December 1963: unsuccessful case where residents of Hiroshima and Nagasaki filed suit against the government of Japan for damages as result of atomic bombs dropped by the U.S. in August of 1945, claiming violation of international law and Japan's waiver of claims obligated them to pay reparations to its people. The action was dismissed. The case

The Declaration of Saint Petersburg 1868 materialized as the first formal agreement to prohibit the use of certain weapons during warfare.⁶⁹ It also highlighted the military role to defend humanitarian interests. The declaration coincides with the Russian invention of a modern bullet designed to explode on contact. The bullet, considered inhuman when used against human targets, led the Russian government to advocate international prohibition. “The Declaration to that effect adopted in 1868, which has the force of law, confirms the customary rule according to which the use of arms, projectiles and material of a nature to cause unnecessary suffering is prohibited.”⁷⁰ The Declaration of Saint Petersburg emerged from the efforts of twenty nations including Prussia and the North German Confederation. They recognized that the “necessities of war ought to yield to the requirements of humanity,”⁷¹ and prohibited the bullet from being used on the battlefield before ever witnessing first-hand the grotesque and brutal effects on a human body. The declaration in turn, limited human suffering in conflict and identified a threshold for the resources and techniques of warfare. In essence, the Saint Petersburg Declaration of 1868 served as somewhat of a springboard for the continued evolution of

analysis includes current reading on prohibited acts of war in the current international law of that timeframe which includes the Saint Petersburg Declaration of 1868.

⁶⁹American Society of International Law <http://www.jstor.org/stable/2212370?seq=2> (accessed 11 March 2012).

⁷⁰International Humanitarian Law: Treaties and Documents from International Committee of the Red Cross (ICRC); dated 11 December 1868, authentic text was in French; source D. Schindler and J. Toman, *The Laws of Armed Conflicts* (Martinus Nihjoff Publisher, 1988), 102, <http://www.icrc.org/ihl.nsf/INTRO/130?OpenDocument> (accessed 3 February 2012).

⁷¹International Committee of the Red Cross, 140th Anniversary of the 1868 Saint Petersburg Declaration, speech by Jakob Kellenberger, president of the ICRC, 24 November 2008.

human rights law. Modern day international law still operates on the premise that the Saint Petersburg Declaration will thrive as a “beacon of humanity” in the future as it was in 1868.⁷²

The Hague Convention 1899

The Hague Regulations of 1899 and 1907 incorporated the Declaration of Saint Petersburg featuring updated prohibitions on “projectiles and explosives from balloons, the use of asphyxiating gases and the use of expanding bullets” in land warfare.⁷³ The Hague Convention of 1899 served “the interest of humanity and the ever-increasing requirements of civilization,”⁷⁴ by governing the laws and customs of war on land. It further defined and clarified the general customs of war, outlining limits and ameliorating the tragic effects as much as possible. The Hague Convention specifies humane treatment of prisoners of war, including rebels/belligerents.⁷⁵ Article 23, Section II governs rules during hostilities and explicitly prohibits poison, excessive violence, unwarranted killing, and destruction or confiscation of property. Article 45 of Section III prohibits “any pressure on the population of occupied territory to take the oath to the hostile power.”

⁷²The Saint Petersburg Declaration is still a prominent document and concept in international law and is credited by the ICRC as having been one of the fundamental contributions to human rights law as it evolved.

⁷³International Committee of the Red Cross, International Humanitarian Law-Treaties and Documents; Hague Peace Conferences of 1899, <http://www.icrc.org/ihl.nsf/WebART/145-90001?OpenDocument> (accessed 11 March 2012) and 1907 <http://www.icrc.org/ihl.nsf/WebART/185-180001?OpenDocument> (accessed 11 March 2012).

⁷⁴Reference the introduction of the Hague Convention 1899, Appendix B.

⁷⁵Hague Convention 1899, Section 1, Articles 1 through 21, Appendix B.

Article 46s mandates respect for family, honor, rights, lives, property, religious convictions and liberty. The 1899 and 1907 Hague Conventions included the origin of crimes against humanity and genocide, right alongside the growing concerns with the horrors of war.

1899: Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.⁷⁶

1907: Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.⁷⁷

This section--referred to as the Martens Clause--acknowledges international and common law, in addition to treaties. Germany signed all of the Hague Conventions and Geneva Conventions (1864, 1899, 1906, and 1907), as well as customary laws governing conduct during war.⁷⁸

⁷⁶Convention with Respect to the Laws of War on Land (Hague II) 29 July 1899, "Treaties and Other International Agreements of the United States of America 1776-1949," compiled by Charles I. Bevans, Vol I Multilateral 1776-1917, Department of State Publication (Washington, DC: Government Printing Office, 1968), http://avalon.law.yale.edu/19th_century/hague02.asp (accessed 4 February 2012).

⁷⁷*Laws and Customs of War on Land (Hague IV)*, 18 October 1907, "Treaties and Other International Agreements of the United States of America 1776-1949," compiled by Charles I. Bevans, Vol I Multilateral 1776-1917, Department of State Publication (Washington, DC: Government Printing Office, 1968), http://avalon.law.yale.edu/19th_century/hague02.asp (accessed 4 February 2012).

⁷⁸The Kingdom of Prussia signed the first Declaration in 1864, as it was not unified until 1871 as Germany.

The 1907 annex contained specific regulations and restrictions with the principle concept being “that the right of belligerents to fight war is not unlimited.” The annex further clarified prosecution for violations included:

attacking undefended towns, villages or dwellings; used poison or other weapons that caused superfluous injuries; declared no quarter; improperly used the flag of truce; wantonly destroyed enemy towns or caused devastation not justified by military necessity; willfully damaged institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science; abused lawful authority over enemy civilizations when occupying an enemy’s territory; mistreated prisoners of war; attacked soldiers who had laid down their arms; used dum dum bullets; used projectiles containing asphyxiating gases calculated to cause unnecessary suffering, used aerial bombs or violated a nation’s neutrality.

Subsequently, the treaty was silent regarding punitive measures of such war crimes, as there existed no enforcement mechanism. Article III stated though that a “belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for acts committed by persons forming part of its armed forces.”⁷⁹ The Hague outlined war crimes and punitive compensation—a start to what would later evolve into the UDHR.

Germany participated in both the Declaration of Saint Petersburg, the Hague Convention, the Convention for the Amelioration of the Condition of the Wounded and Sick Armies in the Field (July 1906 updating the 1864 convention), as well as various other international treaties and customary law during the Herero Rebellion timeframe.⁸⁰

⁷⁹Ball, *Prosecuting War Crimes and Genocide*, 15-16.

⁸⁰Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century*, 12.

Treaties Signed by Germany and In Effect
during the Herero Rebellion

International law, in the form of multilateral treaties, customary international law and laws of war, obligated colonial powers to protect indigenous people. Germany thrived in this environment of international governance having signed and acknowledged several international laws, concepts and obligations. Binding agreements was not a foreign concept to Germany, even before conferences specifically addressing human rights issues. German had been both a leader and participant throughout several proceedings from the Treaty of Berlin to address the Ottoman Empire, to the Berlin Conference on West Africa to regulate the occupation of the African continent.

Germany, during the period preceding the Herero Rebellion, obligated itself through several treaties to include: the 1878 Treaty of Berlin, the German-Dutch Agreement of 1889, the German-Belgian Agreement to criminalize trade in girls 1890, the Antislavery Convention 1890, the Agreement on Administrative Regulation to Ensure Effective Protection Against Trade in Girls 1904, the Second Paris Peace Agreement 1815 and the Quintuple Treaty of 1841 between England, France, Russia, Austria and Prussia.⁸¹ Germany's treaty participation demonstrates its presence and cooperation within the international community with several points of agreement that certainly tie into protection and treatment of indigenous populations.

The Berlin Treaty of 1878 has significance in both European and Balkan historical perspectives and signed during a profound time for the Ottoman Empire. The

⁸¹Rachel Anderson, "Redressing Colonial Genocide Under International Law: The Hereros' Cause of Action Against Germany," *California Law Review* 93, no. 1155 (2005): 1168.

treaty modified an earlier agreement from the same year, the Treaty of San Stefano. The intent of the conference was to reorganize the Balkans following the Russo-Turkish War. The Berlin Treaty of 1878 established Romania, Serbia and Montenegro as independent nations, and recognized Bulgaria's autonomy under Ottoman rule. The treaty, signed in the midst of Bulgarian independence and a declining Ottoman Empire, gave Germany the power to choose their alliance for the negotiations. Germany did not support Russia's desire for an independent Bulgaria; hence, Russia saw that as a violation of trust. Accordingly, the Three Emperor's League (consisting of Germany, Austria and Russia) collapsed although Bismarck somewhat restored the breach in 1881.⁸² The treaty's disintegration intensified the Austrian-Russian opposition, which originated during the Crimean War 1853-1856 and later contributed to continued and escalating conflict in the region. The Treaty of Berlin showed what nations could accomplish with international law.

The Berlin Conference served to address the divergent interests in Africa for the various powers involved; however, it failed to address specific territorial questions between various European powers. Specific territorial disputes, intentionally omitted from the agenda, played out via bilateral agreements for several years afterward.⁸³

Colonization in Africa opened the door for many opportunities whilst at the same time,

⁸²New World Encyclopedia, http://www.newworldencyclopedia.org/entry/Congress_of_Berlin (accessed 4 February 2012).

⁸³Robert O. Collins, *The Partition of Africa: Illusion or Necessity* (New York: John Wiley and Sons Inc., 1969), 106. Robert O. Collins, Associate Professor of African History in the University of California, Santa Barbara, California is a scholarly expert on the Upper Nile region. He regards 1890 as the critical year in the European contest for control of Africa.

presented numerous challenges. Competing powers played the field with regard to alliances and disputes with one another to further their particular interests, Germany playing against Britain to get close to France, etc. Hence, countries developed several bilateral agreements to address various issues and competing interests.

These diplomatic agreements served as means for powers to regulate emigration and transit through territories, whereby constraints prevented expulsion of third country nationals from neighboring countries. Several agreements transpired during a time when nationality was at the forefront of personal identification and increasing state regulation on society.⁸⁴ German-Belgian Agreement to Criminalize Trade in Girls 1890 and the 1889 German-Dutch Agreement served as prime examples of such bilateral agreements targeting specific issues between specific nations.

Thereby Germany was intimately familiar with the art of negotiation and the utilization of treaties and agreements including some of which pertain to fundamental human rights and protection of indigenous populations. Several treaties mentioned basic human rights prior to the 1948 definition. Prior to expansion on the Herero Rebellion in the German South West Colony, scrutiny of German society will properly frame the context and origin of such behavior.

⁸⁴Patrick Weil, *Migration Control in the North Atlantic World: The Evolution of State Practices in Europe and the United States from the French Revolution to the Inter-war Period* (New York: Berghan Books, 2005), 127.

CHAPTER 4

GERMANY AND COLONIZATION

The dramatic overseas expansion in the late nineteenth century, particularly in Africa, stimulated a reassessment of European imperialism. The emphasis on nationalism as the motive for empire gave way to the iron determination of economic necessity, and the economic interpretation of imperialism has had wide appeal among those who believe that man dominates-driven by economic means. Thus, Sir John Scott Keltie attributed the sudden rush for Africa to the explorations of Stanetly, the activities of Leopold, and the intrusion of Germany, but also to the need for protected markets in which to sell the overproduction of European industry and the commercial rivalry it produced sustained the scramble.

— Robert O. Collins, *The Partition of Africa: Illusion or Necessity*

Before we dive into the crucible issue at hand, we must understand the nature of German society during the Herero Rebellion timeline. German society articulates the very nature of colonization and nationalism. Framing the issue with the proper contemporary context, should provide adequate situational awareness and alleviate any preconceived ideas or bias on the part of the reader.

Germany: 1871 to 1921

Technology and industry evolved in the eighteenth century creating an insatiable thirst for power and an imbalance of power in Europe and Africa. The nineteenth century brought about European expansion in territory but also in knowledge.⁸⁵ Countries competed for the prime territory and routes on the African continent to better their standing amongst international and European counterparts. The strongest powers were England, France and Germany; the smaller powers included Portugal, Spain and

⁸⁵Collins, *The Partition of Africa: Illusion or Necessity*, 2.

Belgium.⁸⁶ As for the smaller powers—their colonial holdings allowed them to compete, even on a lesser scale, with the larger, more influential nations. Conflict, tactics, techniques and procedures differed greatly during 19th century European expansion into Africa than previously seen throughout the sixteenth, seventeenth, and eighteenth centuries. Germans resolved conflicts uniquely by force, and continuously entered, changed and disregarded agreements enabling the military to play a decisive role in matters.⁸⁷ Imperialism thrived and nationalism took center stage.

Technological advancement fed nationalism, creating a cultural poise in Europe. “Technological superiority was confused for national superiority, and it certainly helped to create a rationale for conquering technologically primitive peoples and an Olympian confidence in superiority of European rule over them.”⁸⁸ National self-confidence was prevalent amongst European powers, but not particularly Germany. Germany unified as a great power in 1871 and was the last country to enter the colonial race in Africa. Colonialism became a solution to Germany’s national and psychological problems associated with being a competitor amongst European powers. Germany wanted to establish an overseas market for German industry, motivated by economic, geographical and naval interests to remain a Great European power. European powers viewed commercial market expansion and prestige as the “reward for carrying the torch of civilization into the unknown.”⁸⁹ European enthusiasm for colonialism stemmed from an

⁸⁶Collins, *The Partition of Africa: Illusion or Necessity*, 2.

⁸⁷Ibid., 211.

⁸⁸Ibid., 3.

⁸⁹Collins, *The Partition of Africa: Illusion or Necessity*, 4.

assumption that overseas expansion equaled national greatness, hence the European conquest in Africa. European powers “determined the partition, occupation and pacification of Africa.”⁹⁰ Colonists faced resistance amongst the African natives and tension amongst bordering territories controlled by other European countries. What transpired abroad did not coincide with what was reported back home to the German people.

Its population, industry and political environment characterized German society, from about 1871 to 1921. Germany’s economy grew even prior to its unity, and continued to do so, ranking third behind Britain and the United States. Along with Germany’s growing economy, its population rose by a third from 1871 to 1914, totaling sixty five million.⁹¹ Combined economic and population growth contributed to nationalism. Germany sought expansion, creating colonies in Africa as well as the Pacific. Germany, along with other European nations, sought “raw materials, mineral exploitation, scale agricultural production, labor supply, market expansion, commerce, and Christianity and civilization for Africa.”⁹²

J.A. Hobson, a famous British economist, characterized 1870 to 1914 as the Germany’s “Age of Imperialism” whereby Germany sought cheap alternatives, new

⁹⁰Ibid., 6.

⁹¹Gustov (Moltke) Adolf, The German Empire, http://www.allempires.com/article/index.php?q=german_empire (accessed 11 March 2012).

⁹²Exploring Africa, Module Nine: African Colonies. Unit Two: Studying Africa through the Social Studies, 2011, <http://exploringafrica.matrix.msu.edu/students/curriculum/m9/activity4.php> (accessed 11 March 2012).

markets and “fresh field of exploitation,”⁹³ Competing interests in colonialism generated ruthless rivalries amongst European nations. Hence, imperialistic tendencies and the “scramble for partitioning Africa.”⁹⁴ Germany established the Society for German Colonization in 1883 and the German East Africa Company in 1888, heavily emphasizing endeavors to compete in the African market.⁹⁵ Germany fixated on economic development and evolution as a premiere superpower on the European continent. Otto von Bismarck (Prussian Prime Minister from 1862) and Kaiser Wilhelm I (the first Kaiser of Germany in 1871)⁹⁶ thrived when expansion dominated European culture and politics--they sought raw materials and markets for those materials. The similarly competitive nature of Germany during this timeframe would certainly contribute to its role in the World Wars, in relation to Europe and beyond.

Domestically, the thriving economy created an “unequal distribution of wealth” which incited internal social reform and friction in Germany.⁹⁷ Due to the extenuating circumstances, Germany saw a mass migration of about 5.9 million Germans to the United States. In 1850, Germans constituted one-sixth of Chicago’s population and in 1900 one out of every four Chicagoans claimed German ancestry. German migration to

⁹³David Thomson, The New Imperialism, <http://www.thelatinlibrary.com/imperialism/notes/thomson.html> (accessed 11 March 2012).

⁹⁴Ibid., 8.

⁹⁵Ibid., 12.

⁹⁶Ibid., 2.

⁹⁷Ibid.

the United States slowed heavily by 1920.⁹⁸ Germany broadened its influence with expansion into the colonies, while simultaneously alienating its own population to the extent that they relocated to a land more promising and tolerant of culture and religion.

1884-1885 Berlin West Africa Conference and the Partition of Africa

The 1884 to 1885 Berlin West Africa Conference served as a landmark in international law. The conference established the European colonization of Africa, regulating acquisitions on a legal basis. Signatories included Great Britain, Austria-Hungary, Belgium, Denmark, France, Germany, Italy, the Netherlands, Portugal, Russia, Spain, Sweden and Norway, Turkey and the United States. The conference essentially addressed (1) freedom of trade in Africa; (2) slave trade; (3) neutrality of territories in Africa; (4) navigation of the region; and (5) rules for occupation of the African continent.⁹⁹ In the “name of God Almighty” and in a spirit of “good and mutual accord” the conference sought to “obviate the misunderstanding and disputes which might in future arise from new acts of occupation (prises de possession) on the coast of Africa; and concerned, at the same time, as to the means of furthering the moral and material well-being of the native populations.”¹⁰⁰ Chapter I, Article 6 of the 1884-1885 Berlin West Africa Conference specified that all powers bind themselves to “preserve the native

⁹⁸Christiane Harzig, Encyclopedia of Chicago, <http://encyclopedia.chicago.history.org/pages/512.html> (accessed 11 March 2012).

⁹⁹General Act of the Berlin Conference on West Africa, 26 February 1885, http://africanhistory.about.com/od/eracolonialism/l/n_BerlinAct1885.htm (accessed 11 March 2012).

¹⁰⁰Ibid.

tribes,” suppress slavery, and guarantee the natives “freedom of conscience and religious toleration.”¹⁰¹ Treaties such as this, prohibited human trade and highlighted fundamental rights in the late nineteenth century. International law sought to protect Africans during the race for colonies. International law as specified in the treaty obligated Germany to protect the natives. The provisions of the Berlin Conference spoke the heart of two fundamental issues of the time, “the abolition of slave dealing and to the welfare of the peoples of [Africa].”¹⁰² Technology and the advancement of international travel put slave trade and human trafficking at the forefront of international concern along with the treatment of indigenous peoples.

Germany entered “The Partition of Africa”¹⁰³ in somewhat of a hasty scramble. Germany wanted in on the action, equating foreign possessions as being equivalent to world power.¹⁰⁴ “The world at large was astonished at the apparently inexplicable outburst of colonizing zeal on the part of Germany in the early part of 1884; and none were apparently more surprised than the British Foreign Office and the Government of the Cape, though both might well have been prepared for what occurred.”¹⁰⁵ From 1843,

¹⁰¹General Act of the Berlin Conference on West Africa, 26 February 1885 as referenced in http://africanhistory.about.com/od/eracolonialism/l/n_BerlinAct1885.htm (accessed 1 January 2012).

¹⁰²Collins, *The Partition of Africa: Illusion or Necessity*, 107.

¹⁰³J. Scott Keltie, *The Partition of Africa*, 2nd ed. (London: Edward Stanford, 1895), 161.

¹⁰⁴*Ibid.*, 162.

¹⁰⁵*Ibid.*, 164.

Germany promoted emigration to the U.S., Brazil, Nicaragua, and Chile. In 1849, Prussia created a society focused on colonization. The professed objects of the society included:

The study of those lands in which organized German settlements already exist; the social and commercial conditions and the spread of information thereon; the promotion of emigration to regions where settlers of German origin are already established, under conditions favorable to the genius of the German people; the promotion of intellectual and material intercourse between the German colonial settlements and the German fatherland; and lastly, furthering the establishment of trade and navigation and the acquisition of colonies.¹⁰⁶

Germany's colonial spirit grew rapidly from that point on, strengthened by the expansion of the remaining European powers. The German Colonial Society stood up in 1882 at Frankfurt, specifically geared towards African colonization. Publications like Dr. Karl Emil Jung's *Deutsche Kolonien* (1879), and Friedrich Fabri's *Bedarf Deutschland der Kolonien* (1883) influenced the growing popular support for colonialism.

German Colonization

The Berlin West Africa Conference of 1884 gave Germany colonial rights to South West Africa (modern day Namibia) and East Africa (modern day Tanzania, Rwanda, and Burundi). The conference outlined provisions and guidelines for the "preservation of native tribes, suppression of slavery and protection of religious freedom."¹⁰⁷ Thus, arguably, Germany obligated itself to protect the indigenous populations in its colonies. Germany signed various treaties, which governed upstanding behavior towards the indigenous population.

¹⁰⁶Keltie, *The Partition of Africa*, 164.

¹⁰⁷Jeremy Sarkin and Carly Fowler, "Reparations for Historical Human Rights Violations: The International and Historical Dimensions of the Alien Torts Claims Act Genocide Case of the Herero of Namibia," *Human Rights Review* (2008): 341.

Germany's obligations further extended by a series of other treaties signed during this time: the Treaty of Berlin (1878), which outlined the rights of indigenous peoples and minorities; the German-Dutch Agreement (1889), the German-Belgian Agreement to Criminalize Trade in Girls (1890), the Anti-Slavery Convention (1890), which protected the "aboriginal population of Africa; the Agreement on Administrative regulation to Ensure Effective Protection Against Trade in Girls (1904); the Second Paris Peace Agreement (1815); and the Quintuple Treaty (1841), which outlawed trade in human beings and, in particular, Africans.¹⁰⁸

Such treaties defined international law and the behavior of European nations abroad.

Germany's signature represented its acceptance of the responsibilities and obligations set forth in the documents. Germany's use of treaties extended to their desire to get the Herero and Nama peoples to sign and agree to terms of German protection in order to solidify land acquisitions, ensure indigenous people would not enter into agreements with other European nations, and to seek acceptance of domination. In doing so, Germans acknowledged the Nama and Herero ability to enter into treaties. Germany's signature demonstrated intent to protect the people, respect tradition and avoidance of illegal activities.¹⁰⁹ In essence, laws existed prior to the 1948 UN Convention regarding human rights violations. Evidence shows that Germany obliged itself in writing to adhere to the terms and conditions of various international treaties, drafted to protect indigenous populations from violence and slavery, long before the Herero Rebellion.

¹⁰⁸Sarkin and Fowler, "Reparations for Historical Human Rights Violations," 342.

¹⁰⁹*Ibid.*

German Society in the Colonies and the Homeland

The Anglo-German agreement of July 1890 finalized the delineation for German South West Africa, a 340,000 square mile territory with about 200,000 natives.¹¹⁰ German South West Africa was established in August of 1884 and German East Africa in December 1884 (though it was not settled until later).¹¹¹ South West Africa was Germany's second largest colony and the only one suitable for large-scale settlement and farming.¹¹² In 1885, Germany appointed an Imperial Commission to govern the colony on behalf of the German Government, established courts and provided a military force. The Commissioner's initial task was garner cooperation and sign protection treaties with the Herero Chiefs. Explorations and analysis outlined the extremely limited resources and capability of the new landscape. An 1892 prospecting expedition identified minerals, ranching capability and potential railway suitability. At that time, 1200 whites including 300 troops resided in the colony. Governance of the colony took place from Windhoek. The first sign of rebellion took shape in 1893 and 1894, "repressed by the Commissioner by measures of extreme cruelty, which led to his recall."¹¹³ German officials demonstrated harshness in their dealings with the natives. The Herero lost their land at an alarming rate, so startling that the government and missionaries established "reserves."

¹¹⁰Keltie, *The Partition of Africa*, 317.

¹¹¹Collins, *The Partition of Africa: Illusion or Necessity*, 96.

¹¹²George Steinmetz, "The Colonial State as a Social Field: Ethnographic Capital and Native Policy in German Overseas Empire Before 1914," *The Sociological Review* 73, no. 4 (2008): 590.

¹¹³Keltie, *The Partition of Africa*, 323.

Treaty Between Germany and Paramount Chief Maherero
21 October 1885

The two contracting parties signed an agreement establishing relationships and obligations. The 21 October 1885 treaty revised a 3 November 1885, incorporating additional Herero at Omaruru. The preamble mentions Herero desire for protection and friendship with Germany. Chief Maherero and his subjects promised:

1. To guarantee the safety of life and possessions of Germans and their equals in their territories.
2. To guarantee German citizens and their equals unlimited right to travel, to live, to trade, and to work in their territories.
3. To recognize on the occasion of legal difficulties between German citizens and their equals the jurisdiction of the German Emperor.
4. Not to alienate land without the consent of the German Emperor to any other nation or subject thereof; not to contract treaties with any other nation without the German Emperor's consent, nor to grant greater privileges to any other nation or subject of such in their territories but to treat Germany and its citizens as the most favored nation.
5. To contribute to the maintenance of peace in the Protectorate and to submit internal disputes between Chief Maherero and his subcaptains or the captains of neighboring nations to the mediation and final decision of the German administration in South West Africa.

The German Government, in reciprocity, obligated itself:

1. To guarantee protection to Paramount Chief Maherero and his people. It was a token of such protection that the German flag was raised.
2. To leave the jurisdiction in both civil and criminal cases over the Chief's own people solely to him.
3. To see to it that white residents of Hereroland respect the laws, customs and usages of the Natives, and pay the hitherto customary taxes, and do nothing in violation of German criminal law.

4. To respect the treaties concluded between the Herero Tribes and other nations or their citizens prior to this treaty.¹¹⁴

The Herero did not surrender sovereign rights in the protectorate treaties, simply establishing peaceful co-existence for both nations. Germany, by entering into the treaty, recognized the native tribe as an equal.¹¹⁵ It is important to note that neither party regarded the protectorate treaties with the utmost validity as Maherero has signed similar treaties with the English and the German's regarded treaties with Maherero as good as "making a treaty with a little child."¹¹⁶ Germany did not have the capability or the intention to provide the Herero security or protection under the terms of agreement. Eventually the German government, displeased with colonial affairs in GSWA, sought to "enlarge the scope of the projected protection until it became territorial in nature rather than personal, and applied to all people within the Protectorate territory."¹¹⁷ Germany vowed to follow through with intentions to establish and maintain their colony in South West Africa.

Facts and Assumptions Associated With Application of Genocide to Herero Rebellion

Germany extended its land mass to increase its economic standing within the European community. Germany's holdings in Africa created a sense of "colonial

¹¹⁴Arnold Valentin Wallenkampf, "The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism" (dissertation, University of California, 1970), 79-81.

¹¹⁵Ibid., 83.

¹¹⁶Ibid., 82.

¹¹⁷Ibid., 91.

agitation” since Germany was a recent state with no political traditions, who sought colonies for prosperity and because other powers had them.¹¹⁸ Europeans assumed they could carve up Africa with no concern for the inhabitants. Africans, who knew nothing of nor recognized the Berlin Agreement, rebelled against exploitation, oppression and violence. What started out as a rush for colonialism to create a German territory, arguably evolved into genocide. Complications certainly arise when utilizing modern day terminology and applying it to an event more than fifty years senior.

The introductory chapters 1 through 4 set the tone for the pending analysis, providing the necessary background, terms, conditions and policies that contribute to the issue at hand. The historical evolution of human rights clearly indicates presence of the theme and intent during the Herero Rebellion, along with German participation in such agreements at that time. Though genocide is a modern term, it is an established concept supported by over a century of documents and agreements. Therefore, analysis utilizing modern criminal elements and phases should determine applicability of the term “genocide.” The Herero Rebellion seemingly differs from other potentially egregious crimes throughout history. The analysis and determination is not legally binding as was the case with the Nuremberg IMT, and does not consider the issue of German liability for reparations if indeed the actions constitute genocide. The analysis and conclusion simply seeks to answer a long and overdue controversy—was the Herero Rebellion the first genocide of the twentieth century?

¹¹⁸Collins, *The Partition of Africa: Illusion or Necessity*, 96.

CHAPTER 5

THE HERERO REBELLION 1904 TO 1908

In an attempt to establish control in Namibia, the Germans relied upon “use of force and the old colonial tactics of divide and rule.”¹¹⁹ Naturally, the German’s main settlement colony focused on land acquisition. Cattle acquisition became a means to that end, targeting the native wealth of land and cattle, despite native resistance.¹²⁰ Large portions of land seemingly belonged to no one, as the nomadic Herero moved throughout their country as needed to graze and nurture their livestock. Land possession to the Herero existed on a community basis, not as an individual. Land could not be sold or bought according to Herero custom.¹²¹ Cultural differences, imbalanced power and varying anecdotes increased tensions but failed to dissuade the Germans from the quest for land. The divide and rule policy by German administration reaped success as the Germans played indigenous groups against one another. Germans capitalized on competition over land and cattle to divide the native tribes, and forced natives to sign protection treaties in exchange for giving up their land.¹²² The Germans established native Reserves, in accordance with Imperial Ordinance of 10 April 1898, guarding against imminent and total attrition of Herero land.¹²³ Settler attitudes reflected racism

¹¹⁹Katjavivi, *A History of Resistance in Namibia*, 7.

¹²⁰Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 183.

¹²¹*Ibid.*, 188.

¹²²*Ibid.*, 79-81.

¹²³*Ibid.*, 197.

and superiority as “the Negro only existed to be exploited by the white man” and that the “white man had a right to the labor of the black man for his own advancement and improvement of his own existence.”¹²⁴ Despite regulatory attempts to control the land, German intent was to take the land from the natives and enslave them or banish them to the Reserves.

Because their view of ownership and control differed from that of the Germans, initially the Herero cooperated, selling the use of land. In 1885, Herero Chief Maherero signed a treaty with the Germans allocating land for German settlement. In 1888, Chief Maherero broke the treaty due to German forceful confiscation and redistribution of land and cattle, resulting in the first German military presence (under Hauptmann Curt von Francois) in German South West Africa, the Schutztruppe. With authority from Cabinet Order 16 May 1889, von Francois had “absolute power over his troops and European settlers in the Protectorate. He could and did banish people from the colony or condemn them to death.”¹²⁵ When, despite the military presence, tensions and settler dissatisfaction increased, von Francois took the initiative on 12 April 1893, attacking and killing eighty-five Herero men, women and children at Hoornkranz.¹²⁶ Hendrik Witbooi perceived a civilized nation (Germany), which knew the laws and conducts of war, as disgraceful. Francois utilized such force and military prowess to sway the native population until he was relieved in 1894 by Colonel Leutwein. Leutwein chose diplomacy as his mechanism

¹²⁴Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 201.

¹²⁵Ibid., 93.

¹²⁶Gewald, *Herero Heroes*, 54.

to restore German control. He inherited the native war and did his best to negotiate peace. He intervened with the native chiefs for an armistice and negotiated for subjection to the German administration, all whilst working the German agenda for land acquisition and total control of GSWA.¹²⁷

Chief Maherero died in 1890. To make matters worse, the Germans named Samuel Maherero as “Paramount Chief” for their purposes of negotiation and land dealings, but the Herero did not acknowledge him as such due to an array of tribal Chiefs and Captains per customary hierarchy. The Germans connived at the appointment of Samuel Maherero as his successor, in direct violation of Herero law, which named another rightful successor. The accession caused a deep tribal split, which fueled the resistance.¹²⁸ Samuel Maherero increased tribal tensions when he enabled German land acquisitions for added prestige and European goods like alcohol. The Herero revolted in response to the “systematic expropriation of the Herero and their consequent status of rightlessness.”¹²⁹ They preferred to die fighting than wait in resignation until stripped of

¹²⁷Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 112.

¹²⁸Horst Drechsler, *Let us Die Fighting: The Struggle of the Herero and Nama Against German Imperialism 1884–1915* (London: Zed Press, 1980), 132.

¹²⁹Drechsler, *Let us Die Fighting*, 132. First published in 1996 in German under the title *sudwest-afrika unter deutscher Kolonialherrschaft* by Akademie-Verlag, Berlin, 1966. The title of the book stems from a letter sent by Samuel Maherero, Supreme Chief, to Hendrik Witbooi, Chief of the Nama, in early 1904 requesting to join together under German rule. The letter was never delivered as the German messenger instead delivered it to the administration. Some believe had the letter been delivered, and the Herero and Nama united early in the war of liberation, then the significant demise of both tribes may have never occurred.

all possessions. The “war of resistance to German will”¹³⁰ took place between the German colonial administration-military forces, and settlers against the Herero. The Herero, more than ever, insisted on survival and resistance to colonial administration.

The German colonial administration consisted of a commissioner, army officials, doctors, farming officials, administrators and communications personnel. Initially, Germany entered GSWA in hopes of shaping development with very little financial disbursement for armies and the administration. Germany wanted to reap the benefits without providing overwhelming support to the settlers. Germany’s investments catered to German industry, not towards settlers.¹³¹ However, once the rebellion started, Germany reacted harshly with overwhelming military support creating a volatile situation.¹³² German expenditure to maintain the colony in the midst of rebellion was overwhelming, 30-40 million marks for administration and upwards of 50 million marks for military expenditures.¹³³

The German administration executed the “divide-and-rule policy,” confiscating land and cattle. Colonial rule revolved around three centric elements: land acquisition from the Herero for the benefit of German settlers; destruction of traditional social structures to ensure Herero submission; and utilization of Herero labor force in mines and

¹³⁰Katjavivi, *A History of Resistance in Namibia*, 8.

¹³¹Bley, *South-West Africa under German Rule 1894–1914*, 202.

¹³²Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” xiv.

¹³³Emil Zimmerman, *The German Empire of Central Africa*, With introduction by Edwyn Bevan and translated from the original German (New York: George H. Doran Company, 1918), 61.

early industry.¹³⁴ The Germans did not provide education and prohibited the missionaries from teaching the Herero anything but minimal language and Bible lessons.¹³⁵ By 1903, more than half the Herero cattle belonged to Germans.¹³⁶

A German officer, desperate to secure large land claims for future wars, forged land treaties. His “troubled conscience and panic” led to the first shots of the war in Okahandja, not because of a calculated Herero mutiny against German colonial governance.¹³⁷ Though tensions brewed over maltreatment and land exploitations, Chief Maherero hoped to unite the native tribes in preparation for what certainly lay ahead; paranoia started and fueled the war, which began 12 January 1904.¹³⁸ The German administration, though having reported unrest, irregularities and indications of Herero sustainment and mobilization efforts, neither suspected nor anticipated a revolt.¹³⁹ The Germans, taken off guard, did not think the Herero capable or brave enough to conduct such a “united and powerful deed.”¹⁴⁰

At the onset of resistance, telegrams from the administration office in Windhoek reported cattle theft and insubordination towards the white settlers, providing insight to

¹³⁴Katjavivi, *A History of Resistance in Namibia*, 11.

¹³⁵*Ibid.*

¹³⁶Drechsler, *Let us Die Fighting*, 111.

¹³⁷Gewald, *Herero Heroes*, 191. Unfortunately Gewalt does not identify the officer by name.

¹³⁸Drechsler, *Let us Die Fighting*, 132.

¹³⁹Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 50.

¹⁴⁰*Ibid.*

the administration in Berlin as to the current situation.¹⁴¹ Leutwein, caught off guard by the Herero resistance, sought an explanation via correspondence. Samuel Maherero responded to Leutwein's inquiry on why the Herero rebelled by saying: "I did not commence the war this year. It has been started by the whites. For as you know how many Herero have been killed by white people, particularly traders with rifles, and in prisons. And always when I brought these cases to Windhoek the blood of the people was valued at no more than a few head of cattle."¹⁴² Within approximately two weeks, the Herero Rebellion spread throughout all of Hereroland. The Herero purged the land of Germans, murdering some and forcing others away from farms to seek shelter at the German forts.¹⁴³ They looted and pillaged farms, burnt buildings, destroyed crops and repossessed cattle. They murdered all German men, leaving roughly a hundred farmers and traders dead. Missionaries, the only German men spared, oftentimes received Herero aid to make it safely to military outposts.¹⁴⁴ The Herero ultimately aimed to purge their country of German administration and settlers, though they had signed agreements for parcels of land for German utilization. The Herero spared all other nationalities so as not to disrupt the weapon, ammunition and supply lines which relied heavily on adjacent territories and lines of communication. They fought ferociously for their lives, sometimes

¹⁴¹Thomas Pakenham, *The Scramble for Africa: White Man's Conquest of the Dark Continent from 1876 to 1912* (New York: Avon Books, 1991), 602.

¹⁴²Gewald, *Herero Heroes*, 167.

¹⁴³Wallenkampf, "The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism," 30.

¹⁴⁴*Ibid.*, 34.

tearing Germans to pieces after they killed them.¹⁴⁵ Throughout majority of the Rebellion, the Herero dominated. The Herero viewed time on their side; however, remained ignorant to the fact that their only real chance of survival meant destroying all Germans in GSWA. Eventually, the German troops outnumbered the Herero, with tactics far exceeding initial Herero assessments.

In early 1904, the white population was about 4,680 in all of South West Africa. About 1,800 in GSWA, 500 in the administration. Of the adult men, 216 were settlers and farmers with about 118 farms all over GSWA.¹⁴⁶ The defense of the protectorate in early 1904 rested solely in the hands of 36 officers, three veterinarians, one paymaster, 729 men, 800 horses, 10 cannons, five machine guns and lots of rifles. The protectorate spanned a distance one and a half times the size of Imperial Germany.¹⁴⁷ German forces—inadequately manned and equipped—could not handle an insurrection or rebellion.¹⁴⁸

The Herero waged war with 7,000 men, of whom only a third of which had primitive rifles.¹⁴⁹ They fought slow and scattered, burdened in the field by their women, children, cattle and sheep. However, they remained a formidable enemy with unanticipated tactics. They did not fight like Germans, making them unpredictable. At the onset of the war, the German military configuration included one company in the capital

¹⁴⁵Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 34.

¹⁴⁶Ibid., 215.

¹⁴⁷Ibid., 229.

¹⁴⁸Ibid., 233.

¹⁴⁹Gewald, *Herero Heroes*, 169.

and the remaining spread throughout the districts to suppress revolts in the South.¹⁵⁰ Germans summoned reinforcements, and until the additional troops arrived in force, German control of South West Africa threatened to collapse. The Herero, though primitive with antiquated weaponry, fought valiantly armed with a long history of violent tribal warfare.

The Herero's reputation included brutality, deception and contempt for foreign influence. During the tribal wars, Herero murdered Nama prisoners of war and children. They maimed bodies because they religiously believed the dead were still alive. The Nama fought with far more extreme violence, notorious for teaching the once peaceful and gentle Herero violent ways.¹⁵¹ The Nama executed "scorched earth" policy destroying everything in their path, ridding the southern region of Herero.¹⁵² The German viewpoint of the violent, aboriginal, worthless Herero stemmed from cultural misunderstandings. The Herero did not labor, lacked appreciation, stole, and lied, as it was their custom to possess inalienable rights to land, food, water and freedom. They were as proud of their culture as the Germans of theirs.¹⁵³ Albeit, raised in an era of tribal warfare, they did not conduct themselves in an atrocious manner. The Herero defied German control with strategic methodology to reclaim their land, cattle and way of life, whilst ridding their country of German influence.

¹⁵⁰Pakenham, *The Scramble for Africa*, 602.

¹⁵¹Wallenkampf, "The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism," 251.

¹⁵²Gewald, *Herero Heroes*, 47.

¹⁵³Wallenkampf, "The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism," 252.

Throughout the Rebellion, the Herero killed every German man who could bear arms, sparing German missionaries, women, children and all other Europeans.¹⁵⁴ The rebels killed approximately 100 German men (settlers and soldiers) and destroyed railway, telegram links, and German farms while sparing families.¹⁵⁵ Engagements took place at Okahandja, Hamakari, Omaruru, Otjimbingwe and Windhoek to name a few.¹⁵⁶ On 11 August 1904, the decisive battle took place at Hamakari, where German troops encircled and killed thousands of Herero men, women and children.¹⁵⁷ The Herero culminated as a military force between Hamakari and the battle of Waterberg.¹⁵⁸ A few Herero managed to break through the German defense gap, though forced into the Kalahari Desert to die of starvation and thirst when the Germans cut off access and poisoned water wells. The official report (*Der Hottentottenaufstand in SWA*, vol I, page 207) recorded the events as such:

This bold enterprise shows up in the most brilliant light the ruthless energy of the German command in pursuing their beaten enemy. No pains, no sacrifices were spared in eliminating the last remnants of enemy resistance. Like a wounded beast the enemy was tracked down from one water-hole to the next, until finally he became the victim of his own environment. The arid Omaheke was to complete what the German army had begun: the extermination of the Herero nation.¹⁵⁹

¹⁵⁴Pakenham, *The Scramble for Africa*, 609.

¹⁵⁵Katjavivi, *A History of Resistance in Namibia*, 9.

¹⁵⁶Pakenham, *The Scramble for Africa*, 609.

¹⁵⁷Katjavivi, *A History of Resistance in Namibia*, 9.

¹⁵⁸Bley, *South-West Africa under German Rule 1894–1914*, 149.

¹⁵⁹*Ibid.*, 162.

Throughout the rebellion, German troops took no prisoners.¹⁶⁰ They had little food and water to support their own troops in the harsh climate, let alone thousands Herero men, women and children. The primitive lines of communication and supply lines added to the sustainment challenges in caring for and equipping military forces throughout the vast area of responsibility.¹⁶¹ Following the rebellion, Germans herded the remaining injured or returning Herero and Nama into prison and labor camps. The German Imperial Colonial Office Report on the mortality rates listed 7,682 of the 15,000 Herero and 2,000 Nama died from 1904 to 1908.¹⁶² Harsh conditions, climate, deliberate neglect and disease attributed to a 90 percent mortality rate in the camps.¹⁶³ The disastrous camp conditions equaled the brutality displayed throughout the military campaign.¹⁶⁴ From 13 February to 28 March 1905, 125 out of 1,000 Herero died, primarily from the unsanitary conditions and humid climate.

The German administration commented on the high death rates with the following: “The more the Herero people experience personally the consequences of the rebellion, the less will be their desire—and that of generations to come—to stage another uprising. Our military successes have not made much of an impression on them. But the

¹⁶⁰Pakenham, *The Scramble for Africa*, 611.

¹⁶¹Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 142.

¹⁶²*Ibid.*, 125.

¹⁶³Steinmetz, “The Colonial State as a Social Field,” 603.

¹⁶⁴Tilman Dederig, “War and Mobility in the Borderlands of South West Africa in the Early Twentieth Century,” *The International Journal of African Historical Studies* 39, no. 2 (2006): 278.

ordeal they are now undergoing is bound to have a more lasting effect.”¹⁶⁵ The inhumane conditions extricated escape attempts, deterred resistance and punished the Herero long after the conclusion of military operations. By 1 May 1906, Herero captives numbered 14,769 (3,237 of them men). The camps dismantled in August of 1908, to prevent another uprising of concentrated Herero. Suffering and misery continued for the indigenous population from 1908 to 1915 as settlers opened fire on persons who returned to the area, hunted tribes, and enslaved laborers for local or regional manpower. Slavery entailed cruelty, maltreatment and flogging which accounts for decreased indigenous population well after the Rebellion ceased in 1908.

Germany’s political pressure and potential embarrassment motivated the military solution to quell the rebellion. Kaiser Wilhelm II’s first reign, first war and first opportunity to demonstrate the power of an inexperienced army rested on the rebellion and potential failure. The Kaiser delegated General Lothar von Trotha to crush the rebellion by “fair means or foul with military solution,” without consideration for political prowess or the cost of African lives.¹⁶⁶ Germans suspected fundamental discrepancies in the Reich even before the Rebellion. The German government and scholars drafted numerous reports and publications alluding to military force as the only solution and weakness as pursuit of negotiations with the indigenous population.¹⁶⁷ A sudden uprising in German East Africa in July of 1905, confirmed the suspicion. The

¹⁶⁵Drechsler, *Let us Die Fighting*, 207.

¹⁶⁶Pakenham, *The Scramble for Africa*, 609.

¹⁶⁷Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 62.

Maji-Maji rebellion differed significantly, as the natives hid their women and children, and set up ambushes for German troops.¹⁶⁸ The rebellion ended in 1906, famine having killed ten times the number who took arms against the Germans (250–300K). A small contingent of 500 German troops put down the Maji-Maji rebellion in comparison to the 17,000 German troops to crush the rebels in GSWA.¹⁶⁹ The brief comparison demonstrates the active role of the Berlin German government and the drastic difference between German response to rebellions in both colonies—a trade colony and a settler colony.

German Treatment of Indigenous Population

Colonial policy in GSWA depended upon the inferiority of the natives and incapacity for self-governance.¹⁷⁰ Germans demonstrated an inherent determination to expand living space and to flourish at all costs. They viewed nature as aristocratic, favoring the strong while demanding annihilation or unconditional surrender of the weak.¹⁷¹ Germans expected a more vital and creative race to emerge out of the harshness of colonial struggle. Hence, a universal and intense hatred existed amongst settlers and the colonial army towards the African natives.¹⁷² German settlers did not risk health or

¹⁶⁸Pakenham, *The Scramble for Africa*, 615.

¹⁶⁹*Ibid.*, 622.

¹⁷⁰Steinmetz, “The Colonial State as a Social Field,” 593.

¹⁷¹Eric D. Weitz, *A Century of Genocide: Utopias of Race and Nation* (Princeton: Princeton University Press, 2010), 106.

¹⁷²Steinmetz, “The Colonial State as a Social Field,” 602.

well-being to help the natives; they sought to help themselves to land and labor.¹⁷³ The German sentiment shows in their reference to the Herero as “baboons” and treatment accordingly. German behavior ranged from whipping to outright murder.¹⁷⁴ The Herero “habits, primitiveness and heathenism” repulsed the Germans, though few really understood the Herero.¹⁷⁵ Inequality thrived as German murderers garnered extremely light sentences or none at all.¹⁷⁶ The Herero felt like slaves in their own country with ultimate humiliation in all aspects of life: freedom, work, family, tradition and religion. Humiliation tactics deliberately targeted Herero domination. “Nothing makes an impression upon the native except what he sees with his own eyes. He has seen the Germans, his former lords and masters (Beherrscher), in a condition of the deepest humiliation, a humiliation which no doubt our enemies designed for the special reason of

¹⁷³Pakenham, *The Scramble for Africa*, 607.

¹⁷⁴Drechsler, *Let us Die Fighting*, 133.

¹⁷⁵Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 64.

¹⁷⁶As in the case of Prince Prosper von Arenberg: Army Lieutenant sent to GSWA after allegedly mistreating one of his men; Chief of Epukior; court martialled for brutal murder of a prisoner (Cain); sentenced to ten months; public outcry in Germany quashed it; retrial sentenced to 15 years; brought up again after Herero uprising as military duty; acquitted; noble lord served 4 yrs 20 mos. Also in the case of Dietrich: German trader; who killed son of Herero chief’s wife and wounded their infant; claimed “tropical frenzy” though he shot her after failed sexual advances; Dietrich released and maded a Non-Commissioned Officer which allowed him to continue killing Herero. There are many more cases annotated in the Imperial Colonial Office from 1901 to 1904, a huge delta between punishment and severity of the crime. Horst Drechsler’s “Let us Die Fighting: The Struggle of the Herero and Nama Against German Imperialism (1884–1915) contains the above information (134-135).

its effect upon psychology.”¹⁷⁷ Worse than humiliation, the Herero resented the German disregard and flagrant violation of Article 3 of the “treaty of protection and friendship.”¹⁷⁸ In early 1904, they too felt that they were no longer bound to the terms of the agreement and actively dissented, an obstacle to the great German land-grab. German bourgeois writers published articles claiming “blood-thirstiness” and “racial strife” as the motives for the uprisings; because the real cause would have discredited German colonialism, especially if linked to the Herero loss of land and cattle.¹⁷⁹

As soon as the resistance began, Germans sought to vanquish the Herero. The German Colonial League’s Executive Committee published a pamphlet accusing the German administration (Leutwein) as allowing the Herero to do whatever they wanted. Furthermore, the pamphlet read, “Anyone familiar with the life of Africa and other less-civilized non-white peoples knows that Europeans can assert themselves by maintaining the supremacy of their race at all costs. Moreover, anyone familiar with the situation knows that the swifter and harsher the reprisals taken against rebels, the better the

¹⁷⁷Zimmerman, *The German Empire of Central Africa*, xii. This excerpt is from a chapter where Dr. Oskar Karstedt insists that German prestige has been lowered before the eyes of the natives. He was editor of *Deutsche Kolonialzeitung*, where he published a pamphlet called *Koloniale Friedensziele (Colonial Peace Aims)* where he captured German objectives for the colonies (raw materials, overseas naval stations).

¹⁷⁸Drechsler, *Let us Die Fighting*, 137.

¹⁷⁹*Ibid.*, 137. Interesting enough, the German government prepared to send a Special Commissioner to assess the situation in GSWA but never dispatched in accordance with Kaiser Wilhelm II’s wishes, 138.

chances of restoring authority.”¹⁸⁰ German anticipated the only way to restore control was to disarm or eliminate the rebels and confiscate all of their land and cattle.

Herero land loss rates were so high, the government and the missionaries devised a reserve system. Settlers, who felt entitlement for all land and cattle, continued mistreatment and fraudulent land transactions. The Herero contributed to that mistreatment when they failed to pay debt to traders and farmers. The Herero contributed to their plight, preferring to draw on credit for enticing European goods and services. The Herero incurred such huge debts as to warrant liquidation by tribal land and cattle.¹⁸¹ However, not all land and cattle confiscation was legitimate debt collection because Germans sought to expand their wealth and power along with punishment for the Herero resistance. The 1896 cattle confiscation ignited Herero resentment. The 1897 rinderpest epidemic¹⁸² and German execution of healthy livestock to minimize spread depleted livestock even further, converting resentment to war fever.¹⁸³ Dwindling Herero resources and lifeline skyrocketed tensions. On 29 November 1904, the Imperial Government issued a report (Denkschrift) about the status of the colony prior to the

¹⁸⁰Lynn Berat, “Genocide: The Namibian Case Against Germany,” *International Law Review* 165 (1993), <http://digitalcommons.pace.edu/pilr/vol5/iss1/6> (accessed 8 April 2012).

¹⁸¹Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 171.

¹⁸²Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 59.

¹⁸³Gewald, *Herero Heroes*, 113.

Rebellion, which encompassed a fair portrayal of the conditions under German rule. The report gauged conditions that “could produce nothing but revolt.”¹⁸⁴

The Herero and cattle, the two most productive indigenous assets in the colony, if lost would undoubtedly reverse twenty years of work and certainly condemn the colony to failure and bankruptcy.¹⁸⁵ Realizing such, Leutwein issued a decree on 31 December 1898 declaring all debts older than two years be voided, in accordance with Prussian Law of 31 Mar 1838. Leutwein also issued an ordinance on 1 January 1899 prohibiting credit sales to natives. He communicated his compensatory measures to the German government, as he feared that forced debt collection jeopardized Herero lives.¹⁸⁶ The German government overruled his ordinance, set forth a modified version allowing collection for debt collection up to a year.¹⁸⁷ Violent debt collection ensued with feverish frenzy.

The risk to the Herero labor and land did not deter harsh German military action. Settler treatment of the natives certainly provoked the rebellion: “rapes and murders that went unpunished, the abuse of the Herero as though they were animals, judicial lynchings and atrocities by the army” constituted justification on the part of the Herero.¹⁸⁸ Whites received short prison terms if not acquitted for the murder of blacks; yet blacks were

¹⁸⁴Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 140.

¹⁸⁵Pakenham, *The Scramble for Africa*, 610.

¹⁸⁶Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 171.

¹⁸⁷*Ibid.*, 176.

¹⁸⁸Pakenham, *The Scramble for Africa*, 611.

executed for the murder of whites.¹⁸⁹ Rape was so prevalent that the Germans gave it names like “Verkafferung or going native” and “Schmutzwirtschaft or dirty trade.”¹⁹⁰ The GSWA prosecuted not a single rape case prior to the rebellion, the Germans regarding such offenses as mere indulgences.¹⁹¹ However, fewer in number, whites exercised significant influence. From that level of influence, emanated a radical superiority mindset which manifested itself as a fundamental consideration in colonial policy.”¹⁹² Colonial policy in general eventually included annihilation of the entire Herero population. Germans viewed all Herero as “criminals, miscreants, and impediments of such enormity as to deserve the death penalty.”¹⁹³

One horrid example recorded by Jan Cloete, A German guide, entails a young Herero baby boy, discovered in the bush. He was brought to the camp. Soldiers formed a ring and took turns throwing and catching the child. Once tired of the game, a German soldier fixed his bayonet to his rifle and announced that he was ready to catch the child. A soldier tossed the child into the air, and the soldier caught the baby on this bayonet. “The child died in a few minutes and the incident was greeted with roars of laughter by the Germans, who seemed to think it was a great joke.”¹⁹⁴ Similar instances occurred

¹⁸⁹Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 109.

¹⁹⁰*Ibid.*, 107.

¹⁹¹Drechsler, *Let us Die Fighting*, 133.

¹⁹²Zimmerman, *The German Empire of Central Africa*, xiv.

¹⁹³Daniel Jonah Goldhagen, *Worse Than War: Genocide, Eliminationism and the Ongoing Assault on Humanity* (New York: PublicAffairs, 2009), 37.

¹⁹⁴*Ibid.*, 175.

with Herero men, women and children. However, for every horror story there exists a positive account by which German soldiers or settlers treated Herero with dignity and respect. As was the case when Lieutenant Erich von Salzmänn found and fed women and children. Or when evangelist Andreas Kukuri survived the Omaheke desert, though captured and sent to missionary shortly thereafter. Additionally, Amanda—daughter of Captain Zacharias from Otjimbingwe—surrendered safely to the Germans.¹⁹⁵ Examples as such—negative and positive—demonstrate that not all Germans committed violent acts towards the indigenous people, but do not single handedly confirm nor negate genocide allegations.

An estimated 80,000 Herero lived in the territory in 1903, with only 20,000 in 1906. They were shot, bayoneted, clubbed or starved to death.¹⁹⁶ No one will ever know how many died in the desert of starvation, thirst, or illness. Precarious environmental conditions and disease certainly contributed to the death toll, as did the German regard for substandard peoples.¹⁹⁷ The German “police force” actively forged the health of the nation by purging errant features, i.e. the Herero. General von Trotha’s determined agenda forged the will of the people to assist in the cleansing. National Socialism embodied the will of one man, linking his personal objectives with the nation’s political objectives.

¹⁹⁵Claus Nordbruch, “There Was No Genocide Committed on the Herero in German South West Africa,” as presented during the European Culture Council Place on 25 April 2004 (Sacramento, CA), 6.

¹⁹⁶Adam Hochschild, *King Leopold’s Ghost* (Boston: Houghton Mifflin Company, 1998), 282.

¹⁹⁷Zimmerman, *The German Empire of Central Africa*, 44.

Military Deployment

The military had a profound role in the colonial period. Colonial regimes were typically military in nature with occupation by force or threat of force.¹⁹⁸ Military units sited settlements, established lines of communication, launched the initial administration and secured the environment for follow-on forces and colonists. Usually the military provided the initial work force to construct roads, defenses, headquarters and infrastructure in frontier colonies or regions.¹⁹⁹ Because colonization kindled civil disturbances, military police operations included suppression. Violent opposition varied in intensity and duration based on demographics, location and environmental conditions.²⁰⁰ Routinely, colonies employed a dual role for the Governor and Commander-in-Chief based on the multi-function role of the military.

Germany established its South West African colony in 1884; however, the German occupation was not official until Captain Curt von Francois arrived in 1889 with military forces to safeguard German interests and settler superiority. Francois lacked the military and political finesse to deal with any level of native resistance. Desperate, he launched a surprise war against the Herero “in hopes of wiping out the tribe.”²⁰¹ Curt von Francois included in his colonial soldier guide that the “ultimate aim (Endziel) of a war in

¹⁹⁸A. J. Christopher, *Colonial Africa* (London: Croom Helm, 1984), 39.

¹⁹⁹Christopher, *Colonial Africa*, 43.

²⁰⁰*Ibid.*, 41.

²⁰¹Bley, *South-West Africa under German Rule 1894–1914*, 3.

Africa had to be the annihilation of the enemy.”²⁰² Francois attacked Herero alliances to subdue resistance but ultimately failed. When Berlin hesitantly sent reinforcements, Francois assumed he had “carte blanche” and pushed his campaign further. Ultimately, his force remained small and incapable of much more than self-defense.²⁰³ The German Government took the initiative and replaced Francois with Major Leutwein as governor of the colony.

Leutwein campaigned for African acceptance as the representative of a legitimate government and sought centralized state control for economic effectiveness.²⁰⁴ Leutwein tried to establish German sovereignty, though he interfered with tribal organization in doing so.²⁰⁵ Leutwein negotiated peace with Samuel Maherero until the Colonial Department instructed him that he could no longer negotiate “without explicit permission of the Emperor.” Leutwein’s loss of authority, compounded with extensive and slow lines of communication, inhibited resolution. Therefore, Germany sent immediate military assistance. The Marines from cruiser *Habicht* responded immediately, while troops in Hamburg mobilized for deployment.²⁰⁶ Kaiser Wilhelm II transitioned responsibility of the operation to Graf Schlieffen, Chief of Army General Staff, even before reinforcements set foot in GSWA. Schlieffen countered all Leutwein’s proposals and

²⁰²Dominik J. Schaller and Jurgen Zimmerer, “Settlers, Imperialism, Genocide: Seeing the Global Without Ignoring the Local—Introduction,” *Journal of Genocide Research* 10, no. 2 (2008): 192.

²⁰³Bley, *South-West Africa under German Rule 1894–1914*, 4.

²⁰⁴*Ibid.*, 7.

²⁰⁵*Ibid.*, 8.

²⁰⁶*Ibid.*, 155.

ordered an immediate offensive, though Leutwein's troops were more than five thousand miles from the main battle area.²⁰⁷ Military authority and political organization morphed the "native revolt into a full-scale war" in the eyes of Germany. Despite the categorization as war, German forces did not transfer to the War Office as customary.²⁰⁸ Political and public mindset focused on "national defense, emergency and war" thereby trumping the native revolt with abrupt military resolution.²⁰⁹ The General Staff overruled Colonial Department pacification plans and appointed military personnel sympathetic to the new methodology to control the native insurgency. Kaiser Wilhelm II himself, appointed General von Trotha for phase II of the German war against the Herero.²¹⁰

Leutwein may have successfully negotiated peace, though interrupted by General von Trotha (former Commander of German forces in East Africa). The government implicated Leutwein for the German failure to nullify the revolt. Within forty-eight hours of the rebellion, the German Colonial League in Berlin published a pamphlet blaming Leutwein for the events in GSWA:

²⁰⁷Ibid.

²⁰⁸As in the case of the China Campaign when the War Office took responsibility for the expedition and budget considerations; therefore, the Colonial Department could not control strength, composition, equipment nor conduct of the troops in GSWA.

²⁰⁹Bley, *South-West Africa under German Rule 1894–1914*, 157.

²¹⁰First Stage (January to June 1904) Germans commanded by Governor Theodor Leutwein with considerable German losses during the fighting. The second stage (June 1904 to November 1905) was an annihilation campaign led by Lieutenant General von Trotha until his redeployment back to Germany. Upon von Trotha's departure, the colonial administration again split the civilian and military roles with Governor Friedrich and Colonel Dame respectively. Horst Drechsler's "Let Us Die Fighting" illustrates these concepts on pages 147 and 190.

The results of Governor Leutwein's policy of window-dressing, procrastination and appeasement are now patent to everyone. Throughout the country, the natives who, unlike European private citizens, have for years been pampered and made immoderate in their demands through the Governor's blandishments are now in a state of ferment which threatens to assume dangerous proportions. Anyone familiar with the life of African and other less civilized non-white peoples knows that Europeans can assert themselves only by maintaining the supremacy of their race at all costs. Moreover, anyone familiar with the situation knows that the swifter and harsher the reprisals taken against the rebels, the better the chances of restoring authority. The authorities in GSWA have grossly infringed these two fundamental tenets of colonial policy towards the native population.²¹¹

General Lothar von Trotha arrived 11 June 1904,²¹² taking command and declaring martial law shortly thereafter.²¹³ Fresh from crushing the uprising in German East Africa, he was not prepared to make peace in GSWA until he made a salutary example of the rebels.

The German colony administration infrastructure existed in such a manner as to explicitly outline duties, chain of command, replacements and contingency execution of duties.²¹⁴ The administration retained the authority to dismiss governors and staff officials as necessary in the fulfillment of colonial objectives. Nonetheless, once the administration appointed the governor, they did not micromanage the creation or execution of policy.²¹⁵ Hence, Germany replaced Leutwein after failing to stop the rebellion with colonial integration and treatment of Herero as noble savage warriors. Only the administration did not distinguish separate civil and military roles, therefore

²¹¹Drechsler, *Let us Die Fighting*, 142.

²¹²Pakenham, *The Scramble for Africa*, 610.

²¹³Bley, *South-West Africa under German Rule 1894–1914*, 159.

²¹⁴Steinmetz, "The Colonial State as a Social Field," 592.

²¹⁵*Ibid.*

Leutwein and von Trotha locked into a “polarizing battle” with rival viewpoints. They envisioned fundamentally different approaches yet similar attempts to disqualify the other in the eyes of German authorities.²¹⁶ Since Leutwein existed as Germany’s scapegoat for the initial failure to subdue the Herero, von Trotha was sent to do what was necessary to succeed.

Von Trotha clearly communicated both his attitude and intentions in correspondence to the German Chief of General Staff: “My exact knowledge of many Central African tribes, Bantu and others, has shown me the convincing necessity that the negro doesn’t submit to contracts but only to raw violence.”²¹⁷ He further communicated the Rebellion as a “racial fight” and “the exercise of violence with crass terrorism and cruelty” as his policy, even before the extermination order.²¹⁸ One soldier recounted prior to the extermination order that “We had been explicitly told beforehand that this dealt with the extermination of a whole tribe, nothing living was to be spared.”²¹⁹ Soldiers spared no one and killed thousands.

The German “native laws” of 1906 and 1907 marked the end of the war and total expropriation of all Herero land and livestock.²²⁰ Natives were banished to camps and

²¹⁶Ibid., 599.

²¹⁷Schaller and Zimmerer, “Settlers, Imperialism, Genocide: Seeing the Global Without Ignoring the Local-Introduction,” 193.

²¹⁸Ibid.

²¹⁹Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 117.

²²⁰Dederling, “War and Mobility in the Borderlands of South West Africa in the Early Twentieth Century,” 278.

stripped of all rights. Despite the post-rebellion conditions, Africans still did not accept German rule, though colonizers claimed to have established “absolute control” of the indigenous population. Stability did not ensue with the natural progression from war to peace. Co-existence remained difficult with deep-rooted tensions despite employer-employee labor relationships and consolidated native populations in camps. Even the mass killings of the Herero failed to create a subversive landscape following harsh colonial rule.²²¹

Uprisings and Revolts

South West Africa’s legacy of violence was nothing new. For decades, the Herero and Nama tribes fiercely battled each other along for land and water. The distribution of land in contemporary Namibia was racially weighted, so the distribution of land and power caused animosity between the two competing tribes.²²² During the 1864 War between the Herero and the Nama, English traders aided the Herero in defeating Jonker Afrikaner, enabling Herero ascendancy in the region.²²³ The interference by outsiders irritated the Nama, who in 1868, raided and plundered the trade shop and Rehinish mission. Andersson appealed to the King of Prussia for protection, but the outbreak of the Franco-Prussian war diverted the attention and potential German intervention prior to the German colonial presence in Africa. In 1876, a Britain “Palgrave Report” provided an

²²¹Dederling, “War and Mobility in the Borderlands of South West Africa in the Early Twentieth Century,” 276.

²²²Steinmetz, “The Colonial State as a Social Field,” 590.

²²³Traders included Frederick Green, Haybittle, and Andersson (regent and military commander for the period of his natural life or as long as he desired to hold the office).

initial assessment of native vibes in the region for the British Colonial administration. At that time, Chief Samuel Maherero requested British protection against the Nama. Britain responded only to annex Welvis Bay, which enabled German acquisition of the GSWA colony. The report, relevant because analysis of the terrain and volatile nature of century old feuding amongst the native tribes, concluded that “all the tribes, north and south, and in particular the Herero and Namaqua, were badly in need of firm and enlightened rule.”²²⁴ Based on that initial assessment, European colonial policy entailed “moral force;” and escalation if unrest continued, worsened and or reaches crisis as with the Herero and Nama war in 1880. As time progressed, the tribal dissention cycled between active war and brief interludes of peace. Eventually German settlers arrived in GSWA and tensions increased between both African tribes as well as tensions between settlers and natives. Understandably, native wars threatened the lives and belongings of Germans. However, no one foresaw German extremism in GSWA, despite a long history of tribal tensions combined with settler declarations of superiority and control with regard to the natives.²²⁵

The war began at Okahandja. Despite an overall element of surprise to the German administration, German settlers themselves had warning, many of which sought protection in the forts. Those who refused to leave their farms increased their vulnerability and potential contact with the Herero. By February, all Herero Chiefs were in the field, instructing their forces not to lay hands on Englishmen, Boers, Berg-Damara,

²²⁴Eric Moore Ritchie, *The Unfinished War: The Drama of Anglo-German Conflict in Africa* (London: The Camelot Press, Ltd., 1940), 83.

²²⁵Bley, *South-West Africa under German Rule 1894–1914*, 152.

Nama, missionaries or honest traders. The Herero destroyed German farms, drove away settlers' cattle, besieged settlements and garrisons, but failed to capitalize on the advantage with attacks on individual homes or bands of resistance. Occasional ritual tortures and indiscriminate cruelties took place, but for the most part the Herero did not kill out of "blood lust or passion," simply following tribal orders.²²⁶ The Herero tactics were far from perfect. The Herero killed three German victims who surrendered, but did not strategize or employ tactics to kill all Germans.²²⁷ German settlers and military forces reacted fiercely, initiating patrols and showing no mercy to the Herero. Arguably, the Herero did not behave mercifully towards German soldiers either. The Herero maintained the initiative throughout the Rebellion until December 1905, when the Namaqua took up arms with the remaining Herero to continue resistance.²²⁸ Germans killed indiscriminately, murdering men, women and children, armed or unarmed. Upon conclusion of the war, roughly 80 percent of the Herero and 50 percent of the Nama populations died during the rebellion.²²⁹ The devastating and catastrophic effects on the tribes attest to the ruthless German pursuit under the umbrella of a clear and communicated extermination policy.

Several months transpired before Von Trotha's plan to exterminate the Herero took full bloom.²³⁰ Herero Chiefs, summoned from the field to discuss peace terms, died.

²²⁶Bley, *South-West Africa under German Rule 1894–1914*, 177.

²²⁷*Ibid.*, 150.

²²⁸*Ibid.*

²²⁹*Ibid.*, 151.

²³⁰Pakenham, *The Scramble for Africa*, 611.

A negotiated peace was impossible to von Trotha, since Herero Chiefs had fled, or rendered themselves unfit for negotiation via their rebellion. Von Trotha cordoned the land to block all escape-routes and issued his notorious Extermination Order (Vernichtungsbefehl).²³¹ He offered no compromise and sent his army to encircle the Herero at Waterberg. The Herero, convinced they had won the war as few German settlers remained throughout the farmlands, congregated at Waterberg. Little did they know, the German Administration upped the ante with General von Trotha and additional troops to suppress the revolt.

General von Trotha had one objective, a German decisive victory. He envisioned that victory with total annihilation of the Herero people.²³² The decisive Battle of Waterberg commenced on 11 and 12 August 1904. Von Trotha, adamant on Herero total destruction, pursued and pushed the Herero into the Omaheke sandveld. He did so with constant harassment, poisoned wells and a semi-permanent security cordon.²³³ The Herero escaped into the vast desert, desiring only to survive with their cattle. Von Trotha sealed the gap; therein blocking all waterholes and condemning the Herero men, women and children to death. Post-battle, when Germans encountered Herero near Waterberg they shot or bayoneted them instantly, armed or unarmed, capable or incapable of resistance.²³⁴ “Seldom in history has an entire nation been hoarded together to meet the

²³¹Hochschild, *King Leopold's Ghost*, 282.

²³²Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 308.

²³³Drechsler, *Let us Die Fighting*, 156.

²³⁴*Ibid.*, 157.

horrors of that devastating a battle as was the case with the Herero people at the Waterberg Mountains.”²³⁵

Results: Extermination Order and Other Contributing Factors

Von Trotha waited until five months after his arrival to the colony before he decided to exterminate the Herero, announcing in advance his intentions.²³⁶ Von Trotha’s formal proclamation to the Herero proceeded as such:

Osombo-Windimbe, 2 October 1904:

I, the Great General of the German soldiers, address this letter to the Herero people. The Herero are no longer considered German subjects. They have murdered, stolen, cut off ears and other parts from wounded soldiers, and now refuse to fight on, out of cowardice. I have this to say to them: the Herero people will have to leave the country. Otherwise I shall force them to do so by means of guns. Within the German boundaries, every Herero, whether found armed or unarmed, with or without cattle, will be shot. I shall no accept any more women or children. I shall drive them back to their people—otherwise I shall order shots to be fired at them. These are my words to the Herero people.--Signed the Great General of the Mighty Kaiser, von Trotha²³⁷

General von Trotha’s order came after the Herero had already been militarily defeated.”²³⁸ Clearly, he wanted to finish them off. On the same day of the Vernichtungsbefehl (extermination order),²³⁹ von Trotha commented with the following:

²³⁵Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 303.

²³⁶Steinmetz, “The Colonial State as a Social Field,” 602.

²³⁷Pakenham, *The Scramble for Africa*, 612.

²³⁸Goldhagen, *Worse Than War: Genocide, Eliminationism and the Ongoing Assault on Humanity*, 35.

²³⁹Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 125. The German word “vernichten” means annihilation.

I believe that the nation as such should be annihilated . . . I find it most appropriate that the nation perishes instead of infecting our soldiers and diminishing their supplies of water and food . . . They have to perish in the Sandveld or try to cross the Bechuanaland border.²⁴⁰

Immediately following the decree, Germans hung a group of Herero in front of thirty Herero prisoners (men, women and children) to translate the warning. They then provided the prisoners with a copy of the extermination order and released them to disseminate their fate.²⁴¹ The extermination order exists as the cataclysmic moment of decision whereby all other options ceased to exist. Von Trotha ordered all Herero to leave their own country and maintained that they were no longer German subjects, though they had never been otherwise. By both declaration and practice, all Herero men, women and children died instantly at the hands of Germans.²⁴² They had no choice but to fight to the death.

The day after the extermination order, the Nama tribes united on the warpath and joined the rebellion. The Nama Rebellion was “a bloodthirsty massacre of unarmed civilians and helpless soldiers” leaving forty dead. The Rebellion took the form of guerrilla tactics. On 19 May 1905, von Trotha issued a similar order to the Nama:

The great and powerful Emperor of Germany will be lenient with the Namaqua people and has ordered that the lives of those who give themselves up will be spared . . . [but] . . . If anyone thinks that after this notice there will be any

²⁴⁰Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 112.

²⁴¹*Ibid.*

²⁴²Drechsler, *Let us Die Fighting*, 157.

leniency show him he had better quit the country, because if he is again seen in German territories he will be shot and thus all rebels will be eliminated.²⁴³

The German troops lost the offensive and faced humiliation when Waterberg tactics failed against the Herero-Nama combined offensive. Von Trotha's men pursued, hunted, killed, cordoned and manipulated the Herero and Nama, but could not rid the country completely of either tribe. In autumn 1905, the stalemate seemed indefinite. Roughly 300 Nama taunted 15,000 Germans. Berlin lost patience and withdrew Von Trotha.²⁴⁴

Many questioned Von Trotha's decree. It may have been a desperate move, as he did not understand his enemy nor envision a way to defeat them. He may have been too proud to ask for help from the administration, relying on habitual authoritarian slaughter.²⁴⁵ Regardless, he stayed the course engineered to bring about the total destruction of his enemy. The settlers reunited with Leutwein's former administrative officers to combat Trotha's policy, motives stemming from state compensation for losses during the revolt (which they never received) and isolation between two extremes. Even Von Trotha's officers disagreed with his approach. Major Ludwig von Estorff, commander of Eastern Division, thought decimation of the Herero was foolish and cruel. He verbalized his opinion to General von Trotha who strictly maintained his pursuit for

²⁴³Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 133.

²⁴⁴Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 200. Von Trotha departed approximately one month after the death of his wife, Bertha Neumann. The Kaiser decided to relieve him of command in GSWA on 2 November 1905, he left 17 November. His departure may have been connected to her death.

²⁴⁵Wallenkampf, "The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism," 321.

“complete annihilation.”²⁴⁶ Von Trotha’s racist and “social-Darwinist attitudes” were widespread among his contemporaries; however, the “systematic attempt to annihilate a whole people in the context of a colonial war” was.²⁴⁷ Hence, Von Trotha’s extermination order even generated protests as far away as Germany.²⁴⁸ “German colonial officials repeatedly speculated about whether the first Geneva Convention was applicable to colonial warfare.” They felt compelled to discuss the issue of German conduct during the Rebellion within the framework of international law.²⁴⁹ However, nothing came of it.

Leutwein pleaded with the German government to intervene on von Trotha’s “military dictatorship” to spare the Herero and achieve peaceful negotiations. Schlieffen defended Trotha by saying: “After what has happened the co-existence of whites and blacks will be very difficult, unless the blacks are kept in a state of forced labor, indeed in a kind of slavery. Racial war, once it has broken out, can only be ended by the destruction of one of the parties.”²⁵⁰ Schlieffen and von Bulow debated the policy as von Bulow viewed the annihilation as un-Christian. Kaiser Wilhelm II, declared “Christian principles invalid for dealing with heathens and savages.”²⁵¹ Therefore, “the intention of General

²⁴⁶Steinmetz, “The Colonial State as a Social Field, 603.

²⁴⁷Schaller and Zimmerer, “Settlers, Imperialism, Genocide: Seeing the Global Without Ignoring the Local—Introduction,” 193.

²⁴⁸Hochschild, *King Leopold’s Ghost*, 282.

²⁴⁹Steinmetz, “The Colonial State as a Social Field,” 592.

²⁵⁰Bley, *South-West Africa under German Rule 1894–1914*, 165.

²⁵¹Goldhagen, *Worse Than War: Genocide, Eliminationism and the Ongoing Assault on Humanity*, 221.

von Trotha can therefore be approved. The only problem is that he does not have the power to carry it out.”²⁵² Therefore, objections originating from all levels in GSWA failed to spark a much-needed transformation from the German government.

Furthermore, the British government contested the German course of action after years of declining professionalism. Even before the rebellion in 1897, the British Foreign Minister claimed, “it won’t be easy to tell a great military power that its troops wage war like Barbarians.” As time progressed, British troops witnessed alarming German procedures to include reluctance to take prisoners and execute captives.²⁵³ The British government, disgusted at German mutilation to acquire heads and genitals for racial studies in Germany, reported the atrocities throughout all echelons. The British government even appealed to the German Ambassador in London. On all accounts, they beseeched Germany “to abstain in all instances from illegal acts and cruelties towards the natives and during any necessary punitive expeditions to abstain from all habits incompatible with the civilized state, such as the mutilation of corpses.”²⁵⁴ The British objections triggered only inaction on Germany’s part to cease atrocities.

The Kaiser countered Trotha’s proclamation to allow clemency for the Herero, after much debate and analysis. Factors considered included: the Herero necessity in farming, stockbreeding, mining, and foreign opinion. The overarching contributing factor to rescinding the decree was the fact that von Trotha’s annihilation strategy was

²⁵²Goldhagen, *Worse Than War: Genocide, Eliminationism and the Ongoing Assault on Humanity*, 220.

²⁵³Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 120.

²⁵⁴Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century*, 17.

impossible to execute given the resources allotted to GSWA at that time.²⁵⁵ Though the decree was officially rescinded and a modified version released, German practice coincided with the original extermination policy. Hence, von Trotha and company maintained their due course of action. “The German chief of staff supported von Trotha’s genocidal course of action partly to palliate the international humiliation of defeat by an African adversary.”²⁵⁶ In von Trotha’s mind, “forbearance and lenience toward such an enemy is simply a crime committed against one’s own soldiers.”²⁵⁷ Hence, his desire to quell the rebellion at all costs, with no consideration for the future of the colony. Von Trotha, unwilling to accept advice from anyone, intended to kill all Herero irrespective of all concerns—economic, social, legal or moral.

Legal authorities also vetoed Trotha’s declaration, though he was allowed over a year’s time to implement before verbally curtailed. In December 1904, the German administration attempted to quell von Trotha’s anger upon reversing his extermination order. They enticed him to setup concentration camps where the rest of the Herero would be contained and used as laborers.²⁵⁸ Not only did the German government condone his behavior but also they enabled him to execute his intentions. There exist few parallels in European History to the blatant intent to annihilate an entire people, outside the Third

²⁵⁵Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 324.

²⁵⁶Steinmetz, “The Colonial State as a Social Field,” 608.

²⁵⁷Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 144.

²⁵⁸Drechsler, *Let us Die Fighting*, 165.

Reich anyway.²⁵⁹ Brief comparison of the two engages a thought provoking consideration of who engineered the order, von Trotha or the highest echelon of the German government.

Evidence suggests the extermination order may have stemmed from the Kaiser himself as Germans exerted much effort to sanitize records, publications, diaries, correspondence, etc. explicitly removing all negative connotations regarding the Kaiser. Evidently, Germans who frequently dealt with the Kaiser understood the ground rules of executing diplomacy when reporting what he said or did. Though von Trotha's diaries provide much insight and evidence regarding the occurrences in GSWA, the family excluded sensitive details unfavorable to either von Trotha or the Kaiser.²⁶⁰ After all, German criminal code at the time included several provisions applicable to this case including murder as well as explicitly military offenses such as diplomatic treason, insulting the Kaiser, defamation of character, slander and disobeying an order.²⁶¹ General von Trotha plausibly curtailed his personal and military records for fear of criminal prosecution, imprisonment, termination of his military service and defamation of character and reputation.²⁶² In the spirit of sanitization, von Trotha prohibited German forces from providing statements to the *Windhoek Nachrichten* newspaper, forbid

²⁵⁹Pakenham, *The Scramble for Africa*, 611.

²⁶⁰Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 200. Lucy Goldstein Brinkmann, von Trotha's second wife married 1912, sanitized his diary and military record. The family, to this day, holds that General von Trotha acted on behalf of the German government.

²⁶¹Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 203.

²⁶²*Ibid.*

returning troops from discussing the war, and prohibiting publications.²⁶³ In practice, von Trotha also curbed his reports to the general staff so as not to provide fully detailed accounts. German attempts to silence and filter information infers acknowledgement of wrongdoing and legal ramifications for such offenses.

Violations of International Law

Chapters 3 and 4 highlighted the human rights and international agreements present and applicable to Germany during the Rebellion. Chapter 4 captured German society at that time along with colonization motives and objectives. The introductory chapters as a whole provide the context and background necessary to inspect a century-old Rebellion utilizing a modern-day standard such as genocide. Primarily, Germany knew better than to annihilate the Herero tribe based on international and common law at that time. The campaign against the Herero may have been an “unmediated and inevitable result of overwhelmingly negative and dehumanizing representations of this community produced by German missionaries and settlers since the 1840’s.”²⁶⁴ German soldiers, convinced they were killing subhuman creatures and not humans, acted on racial hatred and blind obedience towards a society they regarded as incapable of self-government.²⁶⁵ Military necessity and institutionalized slaughter could explain the German reaction to the Herero Rebellion. However, the facts extend far beyond lengthy cultural differences, misunderstandings and following orders. Evidence weighs heavily against the German

²⁶³Ibid., 207.

²⁶⁴Steinmetz, “The Colonial State as a Social Field,” 602.

²⁶⁵Persico, *Nuremberg: Infamy on Trial*, 277 and 319.

colonial administration and governmental regime both in action and communication. Facts prove the necessary criteria constituting genocide and blatant disregard for international law.

Germany's declaration that no quarter be provided to the Herero violated the Lieber Code and the Land Warfare Regulations annex to the 1899 Hague Convention (updated in the 1907 edition) stating "the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit" and "private citizens are no longer murdered, enslaved or carried off to distant parts, and the inoffensive individual is as little disturbed in his private relations as the commander of the hostile troops can afford to grant in the overruling demands of vigorous war."²⁶⁶ Thereby, protection of the "inoffensive citizen" is the rule.²⁶⁷ German defensive notions of safety, removing Herero dangers, and insufficient sustainment for "protective custody" do little to alleviate the requirement for quarters.²⁶⁸ German troops clearly violated this when they took no prisoners, raped Herero women, killed those who surrendered, maimed the bodies of the deceased sending parts and pieces back to Germany for study and when they treated all Herero like combatants even women and children.

The Hague also requires humane treatment for prisoners of war (Article 3), protection of personal belongings (Article 4), and prisoners of war employed to work, while being paid (Article 6), proper maintenance for prisoners of war (Article 7) and equal treatment as troops regarding food, quarters and clothing (Article 23). The Hague

²⁶⁶Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century*, 81.

²⁶⁷*Ibid.*

²⁶⁸Persico, *Nuremberg: Infamy on Trial*, 270.

explicitly prohibited poison, killing or wounding unarmed/surrendered persons, and destruction or seizure of enemy's property outside the necessities of war.²⁶⁹ As noted, German action against the Herero directly violated international humanitarian law during the Herero Rebellion as Germans constantly violated each of the above elements.

International law at that time displayed early regard for humane treatment and growing concern for the increased brutality of war. One of the things that set the Herero Rebellion apart from all other native resistance efforts in Africa was the Extermination Order. General von Trotha delivered verbally and in writing the German intent to annihilate Herero men, women and children. From the beginning, Germany clearly and brazenly communicated their intent in GSWA and back to the German government. Arguably, the German government as well as the colonial administration in GSWA participated in the annihilation campaign disregarding international and common laws obligating humane treatment for indigenous populations.

Interesting enough, the German government ruled on 28 May 1906 in favor of a resolution to "allocate sufficient land for the Natives so that they might again become self-supporting" in hopes of restoring peacetime conditions to GSWA thereby reducing troop presence. The Reichstag adopted the resolution, however took no action to implement it. The same occurred on 17 March 1908, again with no actions to implement. Throughout the lifetime of GSWA, government officials and individuals reaped the rebellion as justification to deprive the natives of all land, cattle, power, freedom and life. Germans went as far as to publish their intent, both within the colony and back in Germany. They firmly believed that a defeated nation was obligated to pay for the costs

²⁶⁹Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century*, 82.

associated with war; therefore showed no mercy before, during, and after the Herero Rebellion.

The Elements of the Crime Genocide Applied to the Herero Rebellion

Chapter 2 provided an in depth look at the genocide convention, elements of the crime, genocide enforcement and recognition stages of genocide to provide context, background and a solid foundation for analysis. The Herero Rebellion exists as a turning point in history, which chartered a new path for human rights violations regardless of a determination of genocide, mass atrocity or brutal imperialism. Up to this point, the study pronounced both German obligations in the international community as well as the pressures associated with Germany's late entrance into the colonial race. The only remaining question is whether the specific term genocide applies to German action during the Herero Rebellion. Evaluation of the specific elements of the crime will provide that answer. Genocide entails the following categories :(1) genocide by killing; (2) genocide by causing serious bodily or mental harm; (3) genocide by deliberately inflicting conditions of life calculated to bring about physical destruction; (4) genocide imposing measures intended to prevent births and (5) genocide by forcibly transferring children.²⁷⁰

Essentially, the Herero experienced mass murder, incarceration in concentration camps, starvation, dehydration, forced labor, deportations, expropriation of property, torture, racial defilement laws, and banned marriages and interracial children.²⁷¹ That

²⁷⁰Preparatory Commission for the International Criminal Court.

²⁷¹Robert W. Kestling, "Blacks Under the Swastika: A Research Note," *Journal of Negro History* 83, no. 1 (Winter 1998): 85.

being said, the first three of the five elements apply significantly to the Herero Rebellion. Keep in mind, Genocide is done towards a group based on national, ethical, racial or religious characteristics with the intent to destroy the group in completely or in part. Lastly, genocide considers both action and intent of the perpetrator(s) for categorization as such.

Genocide by Killing

Genocide by killing involves one or more victims. Victims account for members of a group, essentially deriving that the victim is essentially the group itself. That victims had to have been targeted as a group. Group traits include ancestry, language, culture, beliefs and appearance. The group must be protected by the convention, meaning it falls into the category of national, ethical, racial or religious group dynamics. Genocide by killing must involve the intent to destroy at least a substantial portion of that group. Genocide by killing is typically premeditated. Given the parameters, German action during the Herero Rebellion constituted genocide by killing.

The Germans targeted the Herero as an entire group, based on the culture, ancestry, language, religion and color. They killed thousands of Herero men, women and children. Germans made no distinction between killing combatants and non-combatants, and the methods employed demonstrated intent to commit genocide.²⁷² General von Trotha publicly announced and put in writing his extermination decree to annihilate the entire Herero tribe. He also issued a similar decree announcing strategic annihilation of the Nama tribe as well, only he did not remain in GSWA long enough to execute that

²⁷²Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 110.

communicated intent. The killing took place before and after the extermination order, when both Francois and von Trotha led German military actions. The killing spanned several years. The German government took no action to cease the genocide once under way. Germany perpetrated the systematic destruction of all Herero life support systems to include land, farms, houses (kraals), cattle, watering holes, grazing rights and life itself. The “organized, systematic, selective and efficient killings by German detachments, the burning down of Herero houses and kraals, the confiscation of their cattle and the poisoning of waterholes and wells” constitute genocide.²⁷³

However, the victim numbers do not define genocide, typically the higher the number the greater the likelihood of genocide-given the remaining circumstances also constitute genocide. The Herero fatality figures range from about sixty to eighty thousand, roughly 85 percent (along with half the Nama population).²⁷⁴ Germans killed about half of the Nama, some of which fought to assist the Herero and many of which the Germans could not distinguish from the Herero.²⁷⁵ Though documentation does not specify exact circumstances of death, majority died directly at the hands of German soldiers or settlers. Certainly, the figures include everything from disease, starvation,

²⁷³Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 114.

²⁷⁴*Ibid.*, 137. Jeremy Sarkin captures all numbers from a variety of sources: Helmut Bley, Horst Drechsler, Harry Schwirck, Alison Palmer, Dorian Haarhoff, Peter Fraenkel and Roger Murry, Raphael Lemkin, Governor Leutwein, Colonial Director Bernhard Durnburg, Isabel Hull, Klaus Epstein, Lamar Middleton, and Nagan and Rodin. Number used is the average and generally agreed upon estimation of Herero and Nama fatalities.

²⁷⁵Goldhagen, *Worse Than War: Genocide, Eliminationism and the Ongoing Assault on Humanity*, 34.

dehydration, hanging, flogging, gunshot wounds, bayoneting to blatant execution. Whether killed by gun, bayonet or deprivation does not change the overall intent. The disparity in numbers and specified circumstances does not nullify the commission of genocide. German action and intent in the Herero Rebellion exceeded the threshold for military culture or conduct of war.

“The entire Herero people must be exterminated” requires no interpretation and leaves little room for debate.²⁷⁶ Evidence in the form of official dialogue, von Trotha’s diary entries, the British Blue Book investigation, German soldier statements, German Colonial Administration documents, missionary accounts, Herero accounts and von Trotha’s public extermination proclamation substantiates the intent and execution of genocide to annihilate the Herero people. Germany proclaimed openly their aim for total elimination. The German solution to the “Herero problem” focused primarily on expulsion and wholesale killing.²⁷⁷ Not only was it a personal policy on behalf of von Trotha, but an official comprehensive policy from the German government as they encouraged, condoned and enabled the events to transpire. Regardless of Germany’s institutionalized slaughter and military culture, which sought obedience rather than independent thinking, the killings, “divorced from any military necessity” exceeded all international standards for the conduct of war.²⁷⁸ The evidence in favor of genocide by

²⁷⁶Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 147.

²⁷⁷Goldhagen, *Worse Than War: Genocide, Eliminationism and the Ongoing Assault on Humanity*, 34.

²⁷⁸Persico, *Nuremberg: Infamy on Trial*, 437.

killing outweighs denialist efforts to minimize, rationalize, contradict or nullify accusations of genocide.

Genocide by Causing Serious Bodily or Mental Harm

“Killing is a brute, physical act. It entails the complete domination of ultimate power over the victim. The way people die carries layers of symbolic meaning; just as human sacrifice does in pre-modern societies. The body becomes not simply the means of death, but a vehicle for effecting more traumatic symbolic and ritual violence.”²⁷⁹ Just as killing was the means of death, Germans used various other methods to cause serious bodily or mental harm to the Herero. They targeted the intangible: Herero personal security, freedom, health, dignity and life.²⁸⁰

Violence does not only mean physical injury or the threat of physical injury, which at the specific moment can be felt as pain. In the foreground is memory, which is formed into experience-of further suffering, the symbolically transmitted presence of older suffering, and the fear bound up with it of the possibility of renewed suffering. Pain and fear, caused by the thorns that lie buried within the inner being, are at least as hard and durable in causing torment and, above all, degradation as the means of compulsion and violence that are felt at the moment the blows rain down upon the body.²⁸¹

Germans asserted their superiority to control the natives, which can also demonstrate genocide. The “systematic disintegration of the political and social institutions, of culture, of language, national feelings, religion and economic existence of a specific group is also

²⁷⁹Weitz, *A Century of Genocide: Utopias of Race and Nation*, 245.

²⁸⁰Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century*, 105.

²⁸¹Weitz, *A Century of Genocide: Utopias of Race and Nation*, 245.

genocidal.”²⁸² Mass murder, torture, slavery and forced assimilation indicate the Herero Rebellion as a bona fide genocide.

International law illustrated Germany’s disregard for human rights and violation of fundamental ideas concerning treatment of indigenous populations during colonialism. German conditions designed for Herero degradation, suppression, deprivation, enslavement, deportation, torture, starvation, rape, suffering, humiliation and persecution were both inhumane and completely unwarranted. Germany dehumanized the Herero calling them “subhuman,” baboons, heathens, savages, and lower than primates; and treated them accordingly. Germans valued dogs, horses and oxen more so than the natives did.²⁸³ Germans blamed the Herero, claiming native solicitation based on reluctance to conform and cower to the German settlers. Germans embarked upon an insidious propaganda campaign to portray the Herero a violent and worthless group in order to justify their treatment as a “raw material.” As soon as the Herero exhibited signs of resistance, the Germans systematically tortured and slaughtered them. Germans viewed the Herero as a constant threat to the colony. So when they could no longer kill them outright, they easily settled for a secondary eliminationist alternative—chaining and slavery. The Germans branded the slaves with a “GH” for “gefangene Herero” which means “captured Herero.”²⁸⁴ The Germans killed and enslaved the Herero for annihilation as well as financial exploitation.

²⁸²Schaller and Zimmerer, “Settlers, Imperialism, Genocide: Seeing the Global Without Ignoring the Local—Introduction,” 196.

²⁸³Goldhagen, *Worse Than War: Genocide, Eliminationism and the Ongoing Assault on Humanity*, 209.

²⁸⁴*Ibid.*, 221.

Evidence corroborates genocide by causing serious bodily or mental harm. German records, personal accounts, correspondence and adjacent colonial powers recorded the atrocities since GSWA's establishment and through its demise. The British government's atrocity Blue Book of 1918 served as the first official investigation into what transpired during the Herero Rebellion.²⁸⁵ Many regard the Blue Book as the "only evidence of an intentional and implemented genocide" while others suggest "an English piece of war propaganda."²⁸⁶ Nonetheless, after intense German protest, the British government ordered the destruction of all copies. Despite orders and attempts to demolish the record, the Blue Book survived. The Blue Book cites the order to kill every Herero man, woman, or child; with detailed descriptions and photographs. The Blue Book recorded killings of prisoners, wounded and unwounded, men, women and children. Those who had surrendered died at the hands of soldiers or labored overseers in camps. German General Staff records and commentaries are vague but highlight Berlin's counter-edict to the extermination order.²⁸⁷ The genocide proceeded without condemnation, pressure, or the government and only ended only when the Germans had killed enough to solve their "Herero problem."²⁸⁸ Annihilation, a German compulsion,

²⁸⁵Reinhart Kossler, "Sjambok or Cane? Reading the Blue Book," *Journal of Southern Africa Studies* 30, no. 3 (September 2004): 703.

²⁸⁶Werner Hillebrecht, "Certain Uncertainties or Venturing Progressively Into Colonial Apologetics," *Journal of Namibian Studies: History, Politics and Culture* 1 (2007): 86.

²⁸⁷Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 117.

²⁸⁸Goldhagen, *Worse Than War: Genocide, Eliminationism and the Ongoing Assault on Humanity*, 253.

resulted in the demise of more than 80 percent of an entire group, the Herero. The remaining Herero bear the scars and mental anguish of surviving when so many did not. The Herero life would forever never be the same.

The Herero Rebellion was the last war of its kind in South West Africa, and the last war won by Germany during the same century. Germany left weak and scattered tribes with a history of subjection. Germany, after having crushed the rebellion, required all Africans over the age seven to carry passes typically to show free labor sources after the 1908 closure of the forced labor camps.²⁸⁹ Germany prohibited tribesman from land or animal acquisition. In essence, Germany “disarmed, detribalized and scattered” the Herero making them permanent serfs to the white settlers, with no escape from subjection.²⁹⁰ The new laws squelched native rights and warranted intermittent fear of another uprising. The postwar treatment of the Herero was just as ruthless as during the rebellion.

Genocide by Deliberating Inflicting Conditions of Life Calculated to Bring About Physical Destruction

Historian Helmut Bley argues, “Germans expropriated property, exploited and enslaved black laborers, legalized a state of lawlessness and pressured the government to sanction genocide against blacks who resisted.”²⁹¹ German tactics, techniques and procedures severely degraded the Herero way of life, a direct threat to their survival.

²⁸⁹Gewald, *Herero Heroes*, 190.

²⁹⁰Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 365.

²⁹¹Kestling, “Blacks Under the Swastika,” 85.

Historian Patrick Wolfe articulates: “land is life—or, at least, land is necessary for life.” Thus contests for land can be—indeed, often are—contests for life.”²⁹² Therefore, German exploitation of land and cattle directly affected life for the Herero people. Germans persecuted Herero persons and property to bring about their physical destruction.

In addition to blatant killing, Germans refused food, water and shelter and poisoned the watering holes. Though the German Criminal Code prohibited administering poison in Section 229, the Army utilized this method to destroy the Herero.²⁹³ The Germans repeatedly used food and water as weapons of war to control the Herero.²⁹⁴ The 13 September 1904 diary entry from von Trotha states: “Feldherero (those without cattle who got subsistence by hunting and gathering on the veld or plains) women and children come in droves asking for water. I have given renewed orders to drive them all back with force.”²⁹⁵ The German cordon sealed off the Herero and made it nearly impossible for them to escape the lethality of desert conditions and the poisoning of the waterholes sealed their fate to perish.²⁹⁶ The poisoning of the wells constitutes genocide under this category as denial of “food, water, shelter, health care and other necessities of life” brought about death, serious bodily harm and mental harm. German intent was

²⁹²Schaller and Zimmerer, “Settlers, Imperialism, Genocide: Seeing the Global Without Ignoring the Local—Introduction,” 196.

²⁹³Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 223.

²⁹⁴*Ibid.*, 115.

²⁹⁵*Ibid.*, 145.

²⁹⁶*Ibid.*, 114.

certainly Herero demise. An official report from the German General Staff clearly demonstrates the deliberate perpetration of circumstances to bring about destruction:

If however the Herero were to break through [cordon], such an outcome of the battle could only be more desirable in the eyes of the German command because the enemy would seal his own fate being doomed to die of thirst in the arid sandveld . . . This bold enterprise shows up in the most brilliant light the ruthless energy of the German command in pursuing their beaten enemy. No pains, no sacrifices were spared in eliminating the last remnants of enemy resistance. Like a wounded beast the enemy was tracked down from the water-hole to the next, until finally he became the victim of his own environment. The arid Omaheke was to complete what the Germany Army had begun: the extermination of the Herero nation.²⁹⁷

According to the definition of genocide and the proven elements of the crime, Germans committed genocide by deliberately inflicting conditions of life calculated to bring about physical destruction.²⁹⁸ Germans overreacted to a small, inept, native rebellion with overwhelming force, lethality and genocide. Genocide was German conscious attempt to physically exterminate a while group, by deliberate killing or actions to bring about death.

Moreover, genocide is typically executed as a response to something, with a particular motivation. Genocide is done to avenge an event (retributive), for land or resources (utilitarian), to monopolize power (monopolistic), massacres as part of conquest (institutional) and for ideological reasons.²⁹⁹ German reaction to the Herero Rebellion falls blatantly into all of these categories. They did so because of pressure, fear of failure, racism, self-image, politics, autonomy and convenience.

²⁹⁷Bley, *South-West Africa under German Rule 1894-1914*, 162.

²⁹⁸Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 116.

²⁹⁹Sarkin, *Colonial Genocide and Reparations Claims in the 21st Century*, 104.

Alternate Explanations

First and foremost, German Colonialism did not stray far from colonial policy and colonial war at that time. Let it be said, “Resistance movements arose in almost every colony immediately following annexation.”³⁰⁰ Colonization was flagrant in Africa at the time, as were mass killings of indigenous populations under the umbrella of resistance wars or routine power struggles. In the early twentieth century, “all forms of colonialism involved cultural, political and psychological assaults on the colonized” in order to establish control.³⁰¹ Even modern colonies are still defined as territories “in which (1) political sovereignty has been seized by a foreign political power and (2) the indigenous population is treated by the conquering state as fundamentally inferior (e.g. as barbarians, savages, heathens, an inferior race, a stagnant civilization, or denizens of a failed state).”³⁰² Germany was an imperial latecomer in the quest to colonize Africa. Not unlike other European powers, Germany faced indigenous resistance. The native resistance jeopardized German ambitions, threatened failure and possible exposure of weakness amongst rival powers. These macro level political considerations mandated decisive action for the German military. Proven warriors like von Trotha, sought a radical solution condoned by the German government, which inarguably led to genocide.³⁰³

³⁰⁰Steinmetz, “The Colonial State as a Social Field,” 592.

³⁰¹Ibid., 589.

³⁰²Ibid., 591.

³⁰³Schaller and Zimmerer, “Settlers, Imperialism, Genocide: Seeing the Global Without Ignoring the Local—Introduction,” 195.

Aside from the colonialism comparison, alternate explanations and viewpoints exist for not overall German action throughout the Rebellion as well as von Trotha's extermination order. Predominantly, Germans argue that there is no actual documentation of von Trotha's proclamation—official or unofficial—as the original was apparently lost.³⁰⁴ This linchpin defense drives to the main distinguishing factor that set the Herero Rebellion apart from all other colonial conflicts involving mass atrocities—the extermination order (full-blown intent). Without an original, multiple versions and translations exist including:

I, the Great General of the German soldiers, address this letter to the Herero people. The Herero are no German subjects anymore. They have murdered and stolen, from wounded soldiers they cut off ears, noses, and other body parts, and now out of cowardice do not wish to fight anymore. I say to the people: Everyone who delivers a captain will receive 1,000 Marks, the person who brings in Samuel will receive 5,000 Marks. The Herero nation must leave the country. If it does not do so, I shall compel them by force. Within the German border any Herero tribesman armed or unarmed, with or without cattle, will be shot. No women and children will be allowed in the territory: they will be driven back to their people or fired upon. These are my words to the Herero people--Signed: the Great General of the Mighty Kaiser, Lt Gen Lothar von Trotha.³⁰⁵

This version corroborates the viewpoint of German psychological intent to threaten and deter continued insurgency. Amidst this argument, von Trotha desired to end the war as fast as possible avoiding future uprisings, whilst confronting unrecognizable enemies with an inclination towards violence. This particular theory resonates the von Trotha proclamation as merely a protective measure.³⁰⁶ Furthermore, this theory scrutinizes the

³⁰⁴Nordbruch, "There Was No Genocide Committed on the Herero in German South West Africa," 5.

³⁰⁵Ibid.

³⁰⁶Ibid.

word “vernichtung”–“extermination”–more so as the contemporary “breaking of military, national or economic resistance” or “neutralizing or breaking of the enemy’s resistance and ability to keep up fighting.”³⁰⁷ This argument captures von Trotha’s strategy as one geared towards finding and disarming the Herero and punishing them with death or confinement in “reception camps.”³⁰⁸ Existing camps and thousands of prisoners attribute credence to this particular defense, or at least in the eyes of some.

German scholars argued too that the decree did not literally mean to wipe out the entire Herero tribe, but that the term coincides with the Clausewitz total war strategy at the time and the total destruction of the opponent’s military in order to annihilate continued organized resistance.³⁰⁹ Germans classified the verbalized intent as “psychological warfare tactics” and denied the actual intent to commit genocide–though the Extermination Order has been the formidable obstacle for historians who wish to portray Germans in a positive light.³¹⁰ Critics argue that the language intended to impress the Kaiser or the General Staff and as propaganda.³¹¹ Others claimed “planned migration” as the rationale for the Herero push into the Sandveld, detrimental only due to

³⁰⁷Nordbruch, “There Was No Genocide Committed on the Herero in German South West Africa,” 5.

³⁰⁸*Ibid.*

³⁰⁹Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 126.

³¹⁰Tilman Dederig, “The German-Herero War of 1904: Revisionism of Genocide or Imaginary Historiography?” *Journal of South African Studies* 19, no. 1 (March 1993): 82.

³¹¹Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 151.

the atypical and limited rainfall that year.³¹² Skeptics argue that Germans also perished under the harsh environmental conditions and disease; not at all the perceived “war machine killers.”³¹³ Critics too argue that Herero population inaccuracies and politically exaggerated numbers pervaded public opinion and fed unsubstantiated allegations of genocide.³¹⁴ German officials and missionaries kept incomplete or inaccurate accounts and estimates, some of which have been destroyed.³¹⁵ Along the same lines, many scholars and historians cannot fathom genocide for the sole reasoning that none of the actual perpetrators or victims are still alive. Simply put, some cannot accept a case for genocide without solid evidentiary numbers or at least a legitimate plaintiff and defendant.

With regard to brutal maltreatment and genocide, skeptics look to military reporting channels to indicate such unwarranted accusations. As is the case with British military attaché—Colonel Trench—who worked alongside the German high command during the Herero Rebellion. Germans view Trench as the “neutral eyewitness” who did not report maltreatment or human rights violations through the chain of command, or any

³¹²Nordbruch, “There Was No Genocide Committed on the Herero in German South West Africa,” 4.

³¹³Dedering, “The German-Herero War of 1904: Revisionism of Genocide or Imaginary Historiography,” 82.

³¹⁴Nordbruch, “There Was No Genocide Committed on the Herero in German South West Africa,” 3.

³¹⁵Dedering, “The German-Herero War of 1904: Revisionism of Genocide or Imaginary Historiography,” 81.

negative reports for that matter.³¹⁶ Nonexistent negative reports denotes zero instances of maltreatment, atrocities or genocide for those who believe this particular viewpoint.

Another profound rebuttal to Herero Genocide speculates that the Herero scattered in all directions—following battles at Waterberg and elsewhere—undisturbed by the Germans. Weeks later, Germans did not hunt but “strenuously followed” Herero tracks. This same argument assures “not the slightest possibility that they might flow back from the desert into German lines.”³¹⁷ Theorists aligned with the “no rain” defense claim that 1904 rainfall in the Omaheke desert was less that year than the remainder of the country, though they do not contest that the Herero suffered an appalling fate.³¹⁸ Similarly, skeptics argue that Germans sent surrendered Herero to mission stations and cared for them, and that “only armed Herero men encountered German guns.”³¹⁹ Tales of violence surfaced as propaganda and gossip, unfounded allegations of German dishonor.

Skeptics argue too that military culture, military necessity, institutionalized violence, dehumanization of the indigenous population and retaliation (kill the Herero if the Herero killed Germans) contributed to German strategy during the rebellion. Believe it or not, strong German military culture originated in the 1871 German constitution which ensured military supremacy over civilian government, complete with little or no

³¹⁶Nordbruch, “There Was No Genocide Committed on the Herero in German South West Africa,” 7.

³¹⁷*Ibid.*, 4.

³¹⁸*Ibid.*

³¹⁹*Ibid.*, 6.

“checks and balances” on military leadership.³²⁰ Intense military necessity amplified by German viewpoints that adherence to treaties should not inhibit prosecution of war and colonial objectives (i.e. military necessity) led to total German commitment and wholesale massacre to reach colonial objectives.³²¹ Skeptics argue too that a “common European perspective on warfare and rebellion” existed at that time governing wars “just” if done in self-defense or for vengeance. Under this perspective, restraint did not apply to unconventional warfare or counterinsurgencies (i.e. rebellions); therefore, soldier honor did not extend to rebels-men, women or children-abolishing liability for Germans exhibiting terror tactics to ensure security for colonial administration and settlers.³²² The German strategy as such would permit civilian defeat and reprisal as unfortunate or perceived necessity. Additionally, colonization aims to defeat military forces, annex territory and to rule over foreigners were not limited, but absolute. Settlers went to Africa to stay, waging war against the entire population because it was hard to distinguish between civilians and combatants. Colonial war meant “total war on a local scale.”³²³ Inevitably, circumstances theoretically created genocidal dimensions, which only magnified with contemporary security vulnerabilities.

Psychologists too have well-structured arguments regarding personality traits, both normal and abnormal, defending German actions. One particular argument mentions

³²⁰Isabel Hull, *Absolute Destruction: Military Culture and the Practices of War in Imperial Germany* (Ithaca: Cornell University Press, 2005), 107.

³²¹Persico, *Nuremberg: Infamy on Trial*, 319.

³²²Moses, “Moving the Genocide Debate Beyond the History Wars,” 260.

³²³*Ibid.*, 261.

German susceptibility to “oversimplification of information processing, ineffective problem solving style, altered self-esteem and diminished regard for human experience.”³²⁴ To some, German mindset rationalized behaviors. Culture, beliefs, values, artifacts, and social norms shape decision-making in any society. When beliefs are shared by others, eccentricities are normalized.³²⁵ Therefore, if majority of German officials thought eradication of the Herero a reasonable means to an end, then the wanton desire to execute Herero men, women and children no longer fell outside the realm of normal, reasonable, feasible and justified endeavors.

Other dissenters utilize genocide as a synonym for the Holocaust, whereby claiming (1) “where no death camps can be found, genocide cannot be said to have occurred,” (2) genocidal intent had to pertain to the whole indigenous population, (3) that Herero and Nama committed genocide against each other and Germans simply brought civilization and law benefits to the African continent and (4) Germany did not succeed in total physical destruction of the Herero- refuting genocide applicability to the Herero Rebellion.³²⁶ The genocide/Holocaust misnomer adds a certain level of reasonable doubt only because the dynamic nature, ambiguous definition and factual correlation between the Holocaust and the Genocide Convention certainly contribute to worthwhile debate.

³²⁴Steven K. Baum, *The Psychology of Genocide* (Cambridge: Cambridge University Press, 2008), 79.

³²⁵*Ibid.*, 81.

³²⁶Moses, “Moving the Genocide Debate Beyond the History Wars,” 267.

CHAPTER 6

CONCLUSION AND RECOMMENDATION

Like any historical event, colonial policy derived from a series of underlying developments by which the world may never fully comprehend.³²⁷ This study captured the essence of colonialism and international law, both historical and contemporary, for a broad understanding of the human rights standards then and now. Words could not sufficiently describe the Holocaust until years later; however, the world now classifies it as genocide. The Nuremberg IMT prosecuted existent crimes-the term genocide was not essential-tolerant of the constantly changing and finite balance between legal and moral violations of human nature. The Genocide Convention of 1948 outlined a broad definition for genocide, the most heinous of human rights crimes, shortly after the Holocaust. The Hague, and Geneva conventions before, and genocide conventions and tribunals since, enhanced those initial concepts and aligned them with an ever-changing environment.

German agreements at the end of the 19th century recognized the concepts of human dignity and limitations on the conduct of war, as demonstrated by the Saint Petersburg Declaration, the Hague Conventions (1899 and 1907), the 1878 Treaty of Berlin and several others. Furthermore, and specific to the case in GSWA, Germany signed several protection treaties with Herrero chiefs. Clearly, Germany was intimately familiar with treaties and agreements protecting indigenous populations and noncombatants. German society and colonial objectives contributed to a sense of local

³²⁷Steinmetz, “The Colonial State as a Social Field,” 602.

total war—one in which Germany could not afford to lose, militarily, financially or by reputation. For the reasons stated, this study rests on a sound baseline adequate for modern day analysis using current genocide conventions—but based on legal and social concepts that were contemporary.

To reiterate the baseline, chapter 1 outlined the Herero Rebellion as a contentious issue for more than one hundred years, and recent attempts by the existing Herero for reparations. Chapter 2 captured the origin of and legal definition of genocide and the specified elements of the crime as the primary foundation for analysis. Chapter 3 outlined the origin and evolution of human rights law, the intricacies of applying modern terminology to a historical event, and treaties in effect during the Herero Rebellion obligating Germany to a certain code of conduct. Chapter 4 conveyed German societal characteristics, colonization efforts and motives, GSWA establishment, and protectorate treaties, which governed colonial policy.

Chapters 1 through 4 established relevance, genocidal definition, human rights notions and international obligations—lucrative foundational elements for evaluating the Herero Rebellion using contemporary standards. Chapter 5 explored German treatment of the indigenous population, military deployment, the circumstances surrounding the Herero Rebellion, the extermination order and its effects on both the Herero and Nama tribes. Chapter 5 presents a concise understanding of the rebellion along with contributing factors that potentially radicalized German action in GSWA. Chapter 5 also examined the Herero Rebellion utilizing three specific criminal elements: “genocide by killing, genocide by causing serious bodily or mental harm, and genocide by deliberately

inflicting conditions of life calculated to bring about physical destruction.”³²⁸ As demonstrated throughout, both historical and contemporary human rights concepts indicate German obligation for humane treatment of indigenous populations and clear violation of such guidance, to the point of genocide.

Was it Genocide by Definition?

Despite the alternate explanations, ample direct and indirect evidence exists demonstrating German intent and attempts to destroy the Herero as a whole. Consistent with the Western standard of proof, beyond a reasonable doubt, the Herero endured savage cruelty in the midst of German genocide. The early twentieth century was an era where Western nations recognized the responsibility to natives in their colonies, though Germany did not.³²⁹ German disregard and authoritarian agenda certainly radicalized a counterinsurgency campaign into full-blown genocide. Modernized communications and media venues aided in the public awareness of happenings in GSWA, making it a crime that would not go unnoticed.³³⁰

Did German Action Meet Genocide Standards of Both Act and Intent?

Notwithstanding claims to the contrary, von Trotha made his intent clear and so did the German government. The public extermination decree undoubtedly targeted the

³²⁸Preparatory Commission for the International Criminal Court.

³²⁹The “White Man’s Burden”—presumed responsibility of the white man to govern and impart their culture on non-white/uncivilized people; sort of a justification for European colonialism.

³³⁰Wallenkampf, “The Herero Rebellion in South West Africa, 1904–1906: A Study in German Colonialism,” 353.

Herero, in accordance with genocide criteria. Savage methods occurred long before von Trotha's arrival, but he abandoned the last minute traces of respect for international law. In von Trotha's own words, "my policy was and is, to apply such violence with the utmost degree of terrorism and brutality. I will exterminate the rebellious tribes with rivers of blood."³³¹ This left little doubt as to the German intent. Genocide criteria include both act and intent, one of which evident. The extermination policy proved counterproductive to colonial requirements for success; however, von Trotha continued his policies up to his 19 November 1905 recall—indicative of his forthright nature.³³² Prevalent German military culture valued leadership and victory such that the German Government empowered von Trotha and rewarded him with Order of Merit and four other prestigious awards "for his devotion to the Fatherland."³³³ Convincing evidence indicates that the Germans acted "with intent to destroy, in whole or in part, a national, ethical, racial or religious group [Herero] as such," meeting both act and intent criteria.³³⁴

From the onset, Germans acted as masters and exerted direct power over the natives. The interaction of competing interests: the imperial metropole, local authority, indigenous population, and the demanding settler population created a recipe for

³³¹Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 132.

³³²Drechsler, *Let us Die Fighting*, 190.

³³³Pakenham, *The Scramble for Africa*, 615.

³³⁴Schabas, "Convention for the Prevention and Punishment of the Crime of Genocide."

disaster.³³⁵ The Germans targeted the Herero for “extermination, expulsion and enslavement” [synonyms for genocide] to advance the growing needs of settlers.³³⁶ Germans conducted roundups, issued and followed an extermination order, tortured natives, conducted experiments and raped native women. The immense brutalities resonated from absolute power given to colonial administrators and condoned by the colonial regime. Settlers added to the mix with an overwhelming sense of entitlement, for land, property and favoritism. The propaganda campaigns of racial war and bloodthirsty savages provoked settler anger and revenge, escalating maltreatment to outright and indiscriminate murder of men, women and children. Under full army command, the pressure to conform radiated from both soldiers and their troops and government superiors. Perpetrators included German troops, settlers, and authorities. They utilized concentration camps, forced labor, starvation, thirst and poison to inflict maximum pain on an adversary whose threatening capability had long since culminated. The Germans took no prisoners during the actual conflict, and annihilated as many as eighty thousand Herero³³⁷ with antiquated and subpar military capability. Germans even sent skulls to Germany for testing and experimentation. Composite and pragmatic data illustrates a blatant disregard for human rights and international law. Lengthy and consistent behavior patterns demonstrate German actions in accordance with genocidal intent. German action

³³⁵Schaller and Zimmerer, “Settlers, Imperialism, Genocide: Seeing the Global Without Ignoring the Local—Introduction,” 196.

³³⁶Sarkin, *Germany’s Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 239.

³³⁷Herero population and victim numbers are estimated as there were no official consensus nor accurate counts at that time. Some estimates are higher, and some lower. Eighty thousand is the prominent estimate used frequently in books, journals, etc.

during Herero Rebellion does meet the legal definition of genocide—not to mention violations of international law and the German Penal Code of 1871.

Does German Action Fit the Elements of the Crime?

As demonstrated in Chapter 5, German actions satisfy the elements of the crime of genocide. The Germans blatantly announced and demonstrated such intent. In summary, the Germans intended to and committed the most heinous human rights violation (now called genocide), as defined by the case study criteria and evidence. Contributing factors ranged from individual and national policy execution. Von Trotha was not a colonizer or diplomat, but a soldier who premeditated violence as the mechanism with which he would conquer the Herero before he ever set foot on GSWA soil. Von Trotha's commandeered decision-making authority and ignored guidance from the Kaiser and General Staff to cease the extermination order. He fought to solidify his reputation and avoid failure on Germany's part to colonize GSWA. He faced an enemy he did not understand nor wish to. Herero did not gauge success of war by battles or campaigns, they garnered victory by cattle capture and retention as their lifeline, even when engaged as combatants—they valued land and cattle for life sustainment. They constantly gathered and regrouped following skirmishes of irregular warfare, but that did not warrant treatment of all Herero as combatants. The Germans overreacted to Herero resistance by means of genocide.

According to the evidence presented, Lothar von Trotha bears the brunt of moral and legal responsibility for the Herero Genocide. Records provide reliable evidence as to his intentions and subsequent German actions to achieve his desired end state. His political, not military, motivation exceeded the required lethal force to obtain military

victory. Though extremely difficult to isolate the exact moment when von Trotha conceptualized his strategic objective of genocide, he clearly did not settle for peaceful negotiations or having successfully defeated Herero military capability. In the midst of the German Government direction to withdraw the extermination order, he disregarded his orders.

Though this particular study is in no way legally or morally binding, action need not be taken for genocidal actions. Perpetrators and victims alike have since passed away. As a matter of fact, von Trotha descendants seemingly accepted the burden of ancestral violence when they attended the one hundred year commemoration in Ozombuzovindimba in October 2004. At the very site where General von Trotha issued the extermination order, they admonished his actions by saying:

We do not intend to play those events down or try to put them into perspective by saying that other European colonial powers had proceeded in the same or similar way. No, in view of the facts, we would like to say the following to the Herero people and to you, one of their highest representatives: we, members of the Trotha family are ashamed of the terrible events that took place a hundred years ago. We deeply regret what happened to your people and children to the so Nama: the cruel unjustified death of tens of thousands of men, women and children.³³⁸

Difficult as it must have been, von Trotha's family acknowledged the "cruel unjustified death of tens of thousands of men, women and children." Though von Trotha's family did not explicitly declare or mention genocide, they acknowledged the cruel and unjustified deaths and stood alongside Herero descendants in shared empathy for the crimes committed, regardless of the term used. In all reality, the legal responsibility is irrelevant; no one will ever stand before judge or jury more than one hundred years after the crime.

³³⁸Sarkin, *Germany's Genocide of the Herero: Kaiser Wilhelm II, His General, His Settlers, His Soldiers*, 200.

Overall, Germany's extermination campaign personified a resolute effort to claim Herero property for the German colonial empire at all costs. Germany acted to preserve self-image, power, colonial objectives and military victory with von Trotha's profound and fearless direction for genocide of the Herero nation.

Recommendation for Future Study and Analysis

If, as argued, the German actions during the Herero Rebellion constituted genocide, the contentious issue yet unresolved is whether Germany should be held responsible for reparations. Germany currently provides substantial humanitarian support to Namibia, though not enough to settle the damages claimed in the Herero lawsuit. Controversy exists from both a liability standpoint as well as "statute of limitations" perspective since all perpetrators have long since perished. Interestingly enough, when Germany lost the colony did they surrender responsibility? If, as the Treaty of Versailles stated, "Germany renounces in favor of the Principal allied and Associated Powers all her rights and titles over her overseas possessions," does that infer renunciation of all rights, responsibilities and liabilities?³³⁹ Both practical and ethical issues exist with holding modern Germans financially responsible to compensate modern Herero, who were not themselves victims. Common law precedent demonstrates the problematic nature of the Herero reparation lawsuit, perhaps why currently pending resolution. Lastly, exploration of Germany's alternative options, if any exist, to stop the rebellion.

³³⁹Treaty of Versailles, 28 June 1919, online archive document, <http://net.lib.byu.edu/~rdh7/wwi/versailles.html> (accessed 3 February 2012).

GLOSSARY

Colonialism. Expansion of populations into new areas and the exploitation of natural and human resources

Imperialism. Policy, practice, or advocacy of extending power and domination of a nation especially by direct territorial acquisitions or by gaining indirect control over the political or economic life of other areas; broadly: the extension or imposition of power, authority, or influence.

Nationalism. Loyalty and devotion to a nation a sense of national consciousness exalting one nation above all others and placing primary emphasis on promotion of its culture and interests as opposed to those of other nations.

Reparation. Act of making amends, offering compensation or reimbursement for a wrong or injury.

APPENDIX A: The Declaration of Saint Petersburg 1868

ART. XIV. In naval wars any strong presumption that either belligerent takes advantage of the benefits of neutrality, with any other view than the interest of the sick and wounded, gives to the other belligerent, until proof to the contrary, the right of suspending the Convention, as regards such belligerent.

Should this presumption become a certainty, notice may be given to such belligerent that the Convention is suspended with regard to him during the whole continuance of the war.

ART. XV. The present Act shall be drawn up in a single original copy, which shall be deposited in the Archives of the Swiss Confederation.

An authentic copy of this Act shall be delivered, with an invitation to adhere to it, to each of the signatory Powers of the Convention of the 22d of August, 1864, as well as to those that have successively acceded to it.

In faith whereof, the undersigned commissaries have drawn up the present project of additional articles and have opposed thereunto the seals of their arms.

Done at Geneva, the twentieth day of the month of October, of the year one thousand eight hundred and sixty-eight.

The Declaration of St. Petersburg, 1868

Upon the invitation of the Imperial Cabinet of Russia, an international military commission having been assembled at St. Petersburg in order to consider the desirability of forbidding the use of certain projectiles in time of war among civilized nations, and this commission having fixed by a common accord the technical limits within which the necessities of war ought to yield to the demands of humanity, the under- signed have been authorized by the orders of their Governments to declare as follows:

Considering that the progress of civilization should have the effect of alleviating, as much as possible the calamities of war:

That the only legitimate object which states should endeavor to accomplish during war is to weaken the military force of the enemy;

That for this purpose, it is sufficient to disable the greatest possible number of men;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;

That the employment of such arms would, therefore, be contrary to the laws of humanity;

The contracting parties engage, mutually, to renounce, in case of war among themselves, the employment, by their military or naval forces, of any projectile of less weight than four hundred grammes, which is explosive, or is charged with fulminating or inflammable substances.

They agree to invite all the states which have not taken part in the deliberations of the International Military Commission, assembled at St. Petersburg, by sending delegates thereto, to accede to the present engagement.

This engagement is obligatory only upon the contracting or acceding parties thereto, in case of war between two or more of themselves; it is not applicable with regard to non-contracting powers, or powers that shall not have acceded to it.

It will also cease to be obligatory from the moment when, in a war between contracting or acceding parties, a non-contracting party, or a non-acceding party, shall join one of the belligerents.

The contracting or acceding parties reserve to themselves the right to come to an understanding, hereafter, whenever a precise proposition shall be drawn up, in view of future improvements which may be effected in the armament of troops, in order to maintain the principles which they have established, and to reconcile the necessities of war with the laws of humanity.³⁴⁰

³⁴⁰*The American Journal of International Law* 1, no. 2 (April 1907): 95-96, <http://www.jstor.org/stable/2212370> (accessed 31 December 2011).

APPENDIX B: Laws and Customs of War on Land: Hague II, July 29, 1899

**32 Stat. 1803;
Treaty Series 403**

[Translation]

CONVENTION WITH RESPECT TO THE LAWS AND CUSTOMS OF WAR ON LAND (HAGUE, II) (29 July 1899)

Entry into Force: 4 September 1900

His Majesty the Emperor of Germany, King of Prussia; [etc.]:

Considering that, while seeking means to preserve peace and prevent armed conflicts among nations, it is likewise necessary to have regard to cases where an appeal to arms may be caused by events which their solicitude could not avert;

Animated by the desire to serve, even in this extreme hypothesis, the interest of humanity and the ever increasing requirements of civilization;

Thinking it important, with this object, to revise the laws and general customs of war, either with the view of defining them more precisely, or of laying down certain limits for the purpose of modifying their severity as far as possible;

Inspired by these views which are enjoined at the present day, as they were twenty-five years ago at the time of the Brussels Conference in 1874, by a wise and generous foresight;

Have, in this spirit, adopted a great number of provisions, the object of which is to define and govern the usages of war on land.

In view of the High Contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war so far as military necessities permit, are destined to serve as general rules of conduct for belligerents in their relations with each other and with populations.

It has not, however, been possible to agree forthwith on provisions embracing all the circumstances which occur in practice.

On the other hand, it could not be intended by the High Contracting Parties that the cases not provided for should, for want of a written provision, be left to the arbitrary judgment of the military Commanders.

Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience;

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood;

The High Contracting Parties, desiring to conclude a Convention to this effect, have appointed as their Plenipotentiaries, to wit:

[List of plenipotentiaries.]

Who, after communication of their full powers, found in good and due form, have agreed on the following:

Article 1

The High Contracting Parties shall issue instructions to their armed land forces, which shall be in conformity with the "Regulations respecting the Laws and Customs of War on Land" annexed to the present Convention.

Article 2

The provisions contained in the Regulations mentioned in Article 1 are only binding on the Contracting Powers, in case of war between two or more of them.

These provisions shall cease to be binding from the time when, in a war between Contracting Powers, a non-Contracting Power joins one of the belligerents.

Article 3

The present Convention shall be ratified as speedily as possible. The ratifications shall be deposited at the Hague.

A procès-verbal shall be drawn up recording the receipt of each ratification, and a copy, duly certified, shall be sent through the diplomatic channel, to all the Contracting Powers.

Article 4

Non-Signatory Powers are allowed to adhere to the present Convention.

For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification, addressed to the Netherland Government, and by it communicated to all the other Contracting Powers.

Article 5

In the event of one of the High Contracting Parties denouncing the present Convention, such denunciation would not take effect until a year after the written notification made to the Netherland Government, and by it at once communicated to all the other Contracting Powers.

This denunciation shall affect only the notifying Power.

In faith of which the Plenipotentiaries have signed the present Convention and affixed their seals thereto.

Done at the Hague the 29th July 1899, in a single copy, which shall be kept in the archives of the Netherland Government, and copies of which, duly certified, shall be delivered to the Contracting Powers through the diplomatic channel.

Annex to the Convention

REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

SECTION I.--ON BELLIGERENTS

CHAPTER I.--On the Qualifications of Belligerents

Article 1

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps, fulfilling the following conditions:

To be commanded by a person responsible for his subordinates;

To have a fixed distinctive emblem recognizable at a distance;

To carry arms openly; and

To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

Article 2

The population of a territory which has not been occupied who, on the enemy's approach, spontaneously take up arms to resist the invading troops without having time to organize themselves in accordance with Article 1, shall be regarded a belligerent, if they respect the laws and customs of war.

Article 3

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy both have a right to be treated as prisoners of war.

CHAPTER II.--On Prisoners of War

Article 4

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers remain their property.

Article 5

Prisoners of war may be interned in a town, fortress, camp, or any other locality, and bound not to go beyond certain fixed limits; but they can only be confined as an indispensable measure of safety.

Article 6

The State may utilize the labor of prisoners of war according to their rank and aptitude. Their tasks shall not be excessive, and shall have nothing to do with the military operations.

Prisoners may be authorized to work for the Public Service, for private persons, or on their own account.

Work done for the State shall be paid for according to the tariffs in force for soldiers of the national army employed on similar tasks.

When the work is for other branches of the Public Service or for private persons, the conditions shall be settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

Article 7

The Government into whose hands prisoners of war have fallen is bound to maintain them.

Failing a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

Article 8

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State into whose hands they have fallen.

Any act of insubordination warrants the adoption, as regards them, of such measures of severity as may be necessary.

Escaped prisoners, recaptured before they have succeeded in rejoining their army, or before quitting the territory occupied by the army that captured them, are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping are again taken prisoners, are not liable to any punishment for the previous flight.

Article 9

Every prisoner of war, if questioned, is bound to declare his true name and rank, and if he disregards this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

Article 10

Prisoners of war may be set at liberty on parole if the laws of their country authorize it, and, in such a case, they are bound, on their personal honor, scrupulously to fulfill, both as regards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

In such cases, their own Government shall not require of nor accept from them any service incompatible with the parole given.

Article 11

A prisoner of war can not be forced to accept his liberty on parole; similarly the hostile Government is not obliged to assent to the prisoner's request to be set at liberty on parole.

Article 12

Any prisoner of war, who is liberated on parole and recaptured, bearing arms against the Government to whom he had pledged his honor, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the Courts.

Article 13

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers, contractors, who fall into the enemy's hands, and whom the latter think fit to detain, have a right to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they were accompanying.

Article 14

A Bureau for information relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States, and, when necessary, in the neutral countries on whose territory belligerents have been received. This Bureau is intended to answer all inquiries about prisoners of war, and is furnished by the various services concerned with all the necessary information to enable it to keep an individual return for each prisoner of war. It is kept informed of interments and changes, as well as of admissions into hospital and deaths.

It is also the duty of the Information Bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the battlefields or left by prisoners who have died in hospital or ambulance, and to transmit them to those interested.

Article 15

Relief Societies for prisoners of war, which are regularly constituted in accordance with the law of the country with the object of serving as the intermediary for charity, shall receive from the belligerents for

themselves and their duly accredited agents every facility, within the bounds of military requirements and Administrative Regulations, for the effective accomplishment of their humane task. Delegates of these Societies may be admitted to the places of interment for the distribution of relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an engagement in writing to comply with all their Regulations for order and police.

Article 16

The Information Bureau shall have the privilege of free postage. Letters, money orders, and valuables, as well as postal parcels destined for the prisoners of war or dispatched by them, shall be free of all postal duties both in the countries of origin and destination, as well as in those they pass through.

Gifts and relief in kind for prisoners of war shall be admitted free of all duties of entry and others, as well as of payments for carriage by the Government railways.

Article 17

Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be repaid by their Government.

Article 18

Prisoners of war shall enjoy every latitude in the exercise of their religion, including attendance at their own church services, provided only they comply with the regulations for order and police issued by the military authorities.

Article 19

The wills of prisoners of war are received or drawn up on the same conditions as for soldiers of the National Army.

The same rules shall be observed regarding death certificates, as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

Article 20

After the conclusion of peace, the repatriation of prisoners of war shall take place as speedily as possible.

CHAPTER III. -- On the Sick and Wounded

Article 21

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of the 22nd August, 1864, subject to any modifications which may be introduced into it.

SECTION II. -- ON HOSTILITIES

CHAPTER I. -- On means of injuring the Enemy, Sieges, and Bombardments

Article 22

The right of belligerents to adopt means of injuring the enemy is not unlimited.

Article 23

Besides the prohibitions provided by special Conventions, it is especially prohibited:--

To employ poison or poisoned arms;

To kill or wound treacherously individuals belonging to the hostile nation or army;

To kill or wound an enemy who, having laid down arms, or having no longer means of defence, has surrendered at discretion;

To declare that no quarter will be given;

To employ arms, projectiles, or material of a nature to cause superfluous injury;

To make improper use of a flag of truce, the national flag, or military ensigns and the enemy's uniform, as well as the distinctive badges of the Geneva Convention;

To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

Article 24

Ruses of war and the employment of methods necessary to obtain information about the enemy and the country, are considered allowable.

Article 25

The attack or bombardment of towns, villages, habitations or buildings which are not defended, is prohibited.

Article 26

The Commander of an attacking force, before commencing a bombardment, except in the case of an assault, should do all he can to warn the authorities.

Article 27

In sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.

The besieged should indicate these buildings or places by some particular and visible signs, which should previously be notified to the assailants.

Article 28

The pillage of a town or place, even when taken by assault, is prohibited.

CHAPTER II. -- On Spies

Article 29

An individual can only be considered a spy if, acting clandestinely, or on false pretences, he obtains, or seeks to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not in disguise who have penetrated into the zone of operations of a hostile army to obtain information are not considered spies. Similarly, the following are not considered spies: soldiers or civilians, carrying out their mission openly, charged with the delivery of despatches destined either for their own army or for that of the enemy. To this class belong likewise individuals sent in balloons to deliver despatches, and generally to maintain communication between the various parts of an army or a territory.

Article 30

A spy taken in the act cannot be punished without previous trial.

Article 31

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

CHAPTER III -- On Flags of Truce

Article 32

An individual is considered a parlementaire who is authorized by one of the belligerents to enter into communication with the other, and who carries a white flag. He has a right to inviolability, as well as the trumpeter, bugler, or drummer, the flag-bearer, and the interpreter who may accompany him.

Article 33

The Chief to whom a flag of truce is sent is not obliged to receive it in all circumstances.

He can take all steps necessary to prevent the envoy taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the envoy temporarily.

Article 34

The envoy loses his rights of inviolability if it is proved beyond doubt that he has taken advantage of his privileged position to provoke or commit an act of treachery.

CHAPTER IV. -- On Capitulations

Article 35

Capitulations agreed on between the Contracting Parties must be in accordance with the rules of military honor.

When once settled, they must be scrupulously observed by both the parties.

CHAPTER V. -- On Armistices

Article 36

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not fixed, the belligerent parties can resume operations at any time, provided always the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

Article 37

An armistice may be general or local. The first suspends all military operations of the belligerent States; the second, only those between certain fractions of the belligerent armies and in a fixed radius.

Article 38

An armistice must be notified officially, and in good time, to the competent authorities and the troops. Hostilities are suspended immediately after the notification, or at a fixed date.

Article 39

It is for the Contracting Parties to settle, in the terms of the armistice, what communications may be held, on the theatre of war, with the population and with each other.

Article 40

Any serious violation of the armistice by one of the parties gives the other party the right to denounce it, and even, in case of urgency, to recommence hostilities at once.

Article 41

A violation of the terms of the armistice by private individuals acting on their own initiative, only confers the right of demanding the punishment of the offenders, and, if necessary, indemnity for the losses sustained.

SECTION III. -- ON MILITARY AUTHORITY OVER HOSTILE TERRITORY

Article 42

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation applies only to the territory where such authority is established, and in a position to assert itself.

Article 43

The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

Article 44

Any compulsion of the population of occupied territory to take part in military operations against its own country is prohibited.

Article 45

Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited.

Article 46

Family honors and rights, individual lives and private property, as well as religious convictions and liberty, must be respected.

Private property cannot be confiscated.

Article 47

Pillage is formally prohibited.

Article 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do it, as far as possible, in accordance with the rules in existence and the assessment in force, and will in consequence be bound to defray the expenses of the administration of the occupied territory on the same scale as that by which the legitimate Government was bound.

Article 49

If, besides the taxes mentioned in the preceding Article, the occupant levies other money taxes in the occupied territory, this can only be for military necessities or the administration of such territory.

Article 50

No general penalty, pecuniary or otherwise, can be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.

Article 51

No tax shall be collected except under a written order and on the responsibility of a Commander-in-Chief.

This collection shall only take place, as far as possible, in accordance with the rules in existence and the assessment of taxes in force.

For every payment a receipt shall be given to the taxpayer.

Article 52

Neither requisitions in kind nor services can be demanded from communes or inhabitants except for the necessities of the army of occupation. They must be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in military operations against their country.

These requisitions and services shall only be demanded on the authority of the Commander in the locality occupied.

The contributions in kind shall, as far as possible, be paid for in ready money; if not, their receipt shall be acknowledged.

Article 53

An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.

Railway plant, land telegraphs, telephones, steamers, and other ships, apart from cases governed by maritime law, as well as depots of arms and, generally, all kinds of war material, even though belonging to Companies or to private persons, are likewise material which may serve for military operations, but they must be restored at the conclusion of peace, and indemnities paid for them.

Article 54

The plant of railways coming from neutral States, whether the property of those States, or of Companies, or of private persons, shall be sent back to them as soon as possible.

Article 55

The occupying State shall only be regarded as administrator and usufructuary of the public buildings, real property, forests, and agricultural works belonging to the hostile State, and situated in the occupied country. It must protect the capital of these properties, and administer it according to the rules of usufruct.

Article 56

The property of the communes, that of religious, charitable, and educational institutions, and those of arts and science, even when State property, shall be treated as private property.

All seizure of, and destruction, or intentional damage done to such institutions, to historical monuments, works of art or science, is prohibited, and should be made the subject of proceedings.

SECTION IV. -- ON THE INTERNMENT OF BELLIGERENTS AND THE CARE OF THE WOUNDED IN NEUTRAL COUNTRIES

Article 57

A neutral State which receives in its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It can keep them in camps, and even confine them in fortresses or locations assigned for this purpose.

It shall decide whether officers may be left at liberty on giving their parole that they will not leave the neutral territory without authorization.

Article 58

Failing a special Convention, the neutral State shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace, the expenses caused by the internment shall be made good.

Article 59

A neutral State may authorize the passage through its territory of wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither combatants nor war material. In such a case, the neutral State is bound to adopt such measures of safety and control as may be necessary for the purpose.

Wounded and sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to insure their not taking part again in the military operations. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

Article 60

The Geneva Convention applies to sick and wounded interned in neutral territory.³⁴¹

³⁴¹Hague II 29 July 1899, “Treaties and Other International Agreements of the United States of America 1776-1949,” compiled by Charles I. Bevans, Vol I Multilateral 1776-1917, Department of State Publication (Washington, DC: Government Printing Office, 1968), http://avalon.law.yale.edu/19th_century/hague02.asp (accessed 4 February 2012).

APPENDIX C: 1948 Universal Declaration Of Human Rights

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 21.

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.³⁴²

³⁴²The Universal Declaration of Human Rights, http://www.un.org/en/documents/udhr/hr_law.shtml (accessed 21 January 2012).

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